94256

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted]

No. [redacted]1 [redacted]

CHARLES CORNELL, APPELLANT

v.

GEORGE H. MOORE, COLLECTOR OF INTERNAL REVENUE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE [redacted] DISTRICT OF [redacted]

[redacted]

[redacted]

(27,989)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 632.

CHARLES CORNELI, APPELLANT,

vs.

GEORGE H. MOORE, COLLECTOR OF INTERNAL REVENUE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

INDEX.

	Original.	Print.
Caption	*a*	1
Amended bill of complaint	2	1
Motion to dismiss bill	5	3
Decree	7	4
Petition for appeal	8	4
Assignment of errors	9	4
Citation and service	11	5
Bond on appeal	12	6
Præcipe for record	13	7
Clerk's certificate	14	8

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 3, 1920.

a In the United States District Court within and for the Eastern Division of the Eastern Judicial District of Missouri.

No. 5282.

CHARLES CORNELI, Plaintiff,

vs.

GEORGE H. MOORE, etc., Defendant.

TRANSCRIPT OF THE RECORD ON APPEAL.

1 UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

Be it remembered that heretofore, to wit, on the 26th day of October, A. D., 1920, there was filed in the office of the Clerk of the District Court of the United States, within and for the Eastern Division of the Eastern Judicial District of Missouri, in cause numbered 5282 of causes in said court, wherein Charles Corneli is Plaintiff, and George H. Moore, Collector of Internal Revenue of the United States for the First District of Missouri, is defendant, a Præcipe for Transcript, which said Præcipe for Transcript, and the pleadings and proceedings called for therein, and in the order called for therein, are in words and figures as follows, to wit:

2 (*Amended Bill of Complaint.*)

To the Hon. Charles B. Faris, Judge of the United States District Court:

Charles Corneli, citizen and resident of the City of St. Louis, and State of Missouri, brings this amended bill of complaint against George H. Moore, citizen and resident of said city and state, and respectfully shows unto this Honorable Court, as follows:

That the defendant is Collector of Internal Revenue of the United States, for the First Internal Revenue District, of the State of Missouri, and as such is charged by law with the duty of collecting and receiving taxes due the United States, on distilled spirits, in Government Bonded Warehouses, in said District, and, upon the payment of the taxes due on said spirits, by the owners thereof, to issue Internal Revenue stamps showing the payment of the taxes due the United States on said spirits, and to release said spirits to the owners thereof; that the Government Bonded Warehouses in said District and the distilled spirits on deposit therein and the keys to said Warehouses and the right of ingress and egress from and to the same are now in the custody and control of defendant.

That complainant is the owner of a barrel of distilled spirits, here-

inafter described, and that he became the owner thereof and has owned the same ever since the Spring of 1917; that said spirits are now in possession of defendant and on deposit in Government
3 General Bonded Warehouse No. 1, of the United States, located at Duncan and Boyle Avenues, in said city and state, and in the First United States Internal Revenue District of said State; that said spirits are contained in a barrel, numbered 125694, containing Thirty-three and five-tenths (33 5/10) taxable gallons, produced by the Early Times Distilling Company, at Distillery No. 7, situated in Nelson County, in the State of Kentucky, in the Fifth United States Internal Revenue District of said state; that there is now due the United States as taxes on the aforesaid spirits of complainant the sum of Two Hundred Fourteen Dollars and Forty cents ($214.40); that the complainant has tendered to defendant the aforesaid sum of money, which is the full amount of the tax due the United States on said spirits, and has demanded of defendant that he issue complainant United States Internal Revenue Stamps showing the payment of the aforesaid tax on said spirits and the release of said spirits; that the defendant refused and still refuses to accept said tender or to release said spirits; that complainant desires to obtain possession of said spirits, his private property, and to transport the same to his private dwelling in the City of St. Louis, which is occupied and used by complainant as his dwelling only; that he does not desire the possession of said spirits for the purpose of using or disposing of the same in violation of any law of the United States; that defendant's refusal to release said spirits to complainant is wrongful and illegal and in violation of the Fifth Amendment to the Constitution of the United States, in this, to wit; complainant is deprived of his property without due process of law; the withholding of possession of said spirits is a taking of his private property for a public use without just compensation.

Wherefore, complainant prays this Honorable Court to grant him a writ of subpœna directed to the defendant, commanding him to appear and answer this complaint, and for a decree ordering and directing the defendant to receive the aforesaid tender and to issue to complainant internal revenue stamps showing the payment of the said tax, and to release said spirits to complainant, and for such other and further orders and decrees as to the Court shall seem just
4 and equitable.

(Signed) ELLIOTT W. MAJOR,
(Signed) GLENDY B. ARNOLD,
Attorneys for Complainant.

STATE OF MISSOURI,
City of St. Louis, ss:

I, Charles Corneli, being duly sworn, depose and say that I am the complainant in the foregoing amended bill of complaint; that I have read the same and know the contents thereof; that in so far as the same are allegations of fact, they are true of my own knowledge.

(Signed) CHARLES CORNELI.

Subscribed and sworn to before me this 2nd day of October, 1920.
My commission expires July 2, 1923.
[Notary Seal.] (Signed) OLIVER F. ERBS,
Notary Public.

(Endorsed: "Filed Oct. 7, 1920. W. W. Nall, clerk.")

5 *(Motion to Dismiss Bill.)*

Now comes the defendant in the above entitled action, and by leave of Court, moves to dismiss complainant's bill herein for the following reasons, to-wit:

First. The suit in effect is one against the United States and the bill does not aver or show that the United States has consented to be sued herein.

Second. The facts alleged in the bill are insufficient to constitute a valid cause of action in equity.

Third. The Court has no jurisdiction to grant the relief prayed for or any part thereof.

Fourth. The bill does not present a cause of action in equity under the Constitution of the United States.

Fifth. The bill does not disclose a cause of action equitable in its nature, civil in its character, and arising under the Constitution of the United States.

Sixth. The bill on its face shows that by the suit it is sought to obtain a decree of this Court without authority of law, commanding, ordering and directing defendant to receive from complainant the tax said to be due on certain distilled spirits mentioned in said bill and to issue complainant internal revenue stamps showing the payment of said tax and to release said spirits to complainant.

Seventh. The Court judicially knows that the relief sought in and by said bill is forbidden and prohibited by law, and particularly by the Act of Congress known and designated as the "National Prohibition Act," which is a valid and subsisting law.

6 Eighth. It appears from the bill that the complainant has a plain, adequate and complete remedy at law.

Wherefore the defendant says that he should not be held to answer to the bill or to the several allegations thereof above referred to, but that said bill should be dismissed with costs to the complainant.

(Signed) W. L. HENSLEY,
United States Attorney;
(Signed) BENJ. L. WHITE,
Assistant United States Attorney,
Solicitors for Defendant.

(Endorsed: "Filed Mar. 25, 1920. W. W. Nall, clerk." "Re-filed Oct. 7, 1920. W. W. Nall, clerk.")

7 *Amended Bill of Complaint (and Record Entry Showing Filing of Motion to Dismiss, Motion Submitted to the Court, Final Decree).*

Now at this day comes said complainant by his solicitor, and, by leave of Court, files an amended bill of Complaint in this cause; and comes also said defendant appearing by the United States Attorney for the Eastern District of Missouri and re-files his motion to dismiss herein, which motion is now submitted by counsel to the Court; upon due consideration whereof, and for the reasons stated in the opinion heretofore filed in this cause, the Court doth

Order that said motion be sustained and that the amended bill of complaint herein be and the same is hereby dismissed, for want of equity, at the costs of said complainant, for which costs let execution issue.

October 7th, 1920.

(Signed) C. B. FARIS,
Judge.

8 (*Petition for Appeal.*)

To the Hon. Charles B. Faris, Judge of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri:

The above named plaintiff, Charles Corneli, believing himself aggrieved by the decree made and entered in this cause on the 7th day of October, 1920, dismissing plaintiff's amended bill of complaint, does hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors which is filed herewith, and plaintiff prays that his appeal may be allowed, and that citation issue as provided by law, and that a transcript of the record, upon which said decree was based, duly authenticated, may be sent to the United States Supreme Court.

(Signed) ELLIOTT W. MAJOR AND
G. B. ARNOLD,
Solicitors for Plaintiff.

Approved as prayed
(Signed) C. B. FARIS,
Judge.

(Endorsed: "Filed Oct. 26, 1920. W. W. Nall, clerk.")

9 (*Assignment of Errors.*)

Now comes the plaintiff in the above entitled cause and respectfully complains that the decree entered in said cause on the 7th day of October, 1920, is erroneous and prejudicial to plaintiff in the following particulars:

I.

The court erred in sustaining the defendant's motion to dismiss said amended bill and in entering a decree in dismissing said bill.

II.

Said decree deprives the plaintiff of the protection of the Fifth Amendment to the Constitution of the United States, in that it sanctions the taking of the plaintiff's private property without due process of law, and the taking of plaintiff's private property for a public use without any compensation.

III.

Said decree is neither supported nor sustained by the Eighteenth Amendment to the Constitution of the United States.

IV.

In rendering said decree, the Court erroneously held the Fifth and the Eighteenth Amendments to be in conflict.

10 V.

Under the allegations of plaintiff's amended bill he is entitled to a decree against the defendant compelling and directing the defendant to release to plaintiff the spirits described in said amended bill.

Wherefore, plaintiff prays that said decree be reversed; that the Supreme Court cause the proper decree to be entered directing the defendant to release to the plaintiff, without the requirement of a permit, the spirits described in plaintiff's amended bill, and for such other and further relief as the plaintiff may be entitled to receive.

(Signed) ELLIOTT W. MAJOR AND
G. B. ARNOLD,
Solicitors for Plaintiff.

(Endorsed: "Filed Oct. 26, 1920. W. W. Nall, clerk.")

11 The United States of America to George H. Moore, Collector of Internal Revenue of the United States for the First District of Missouri, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, thirty days from and after the day this Citation bears date, pursuant to an order allowing appeal, filed in the Clerk's office of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, wherein Charles Corneli is appellant,

and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Charles B. Faris, Judge of the District Courts of the United States within and for the Eastern District of Missouri, this 26th day of October in the year of our Lord one thousand nine hundred and twenty.

C. B. FARIS,
United States District Judge for the Eastern District of Missouri.

Service hereby acknowledged 10/26/20.
J. E. CARROLL,
U. S. Atty.

[Endorsed:] M. 47. No. 5282. United States District Court, Eastern Division of the Eastern Judicial District of Missouri. Charles Corneli, Appellant, vs. George H. Moore, Collector of Internal Revenue of the United States for the First District of Missouri. Citation. Filed Oct. 26, 1920. W. W. Nall, clerk.

12 (*Appeal Bond.*)

Know all men by these presents, that we, Charles Corneli, as principal, and Southern Surety Company, as surety, are held and firmly bound unto George H. Moore, Collector of Internal Revenue United State for the First District of Missouri, in the full and just sum of Five Hundred ($500.00) Dollars to be paid to the said George H. Moore, Collector Internal Revenue United States for the First District of Missouri, his successors or assigns; to which payment well and truly to be made, said Principal binds himself, *we bind ourselves*, his heirs, executors, and administrators and said Surety binds itself, its successors or assigns, jointly and severally by these presents. Sealed with our seals, and dated this 24th day of November in the year of our Lord one thousand nine hundred and twenty.

Whereas, lately at the September term A. D. 1920, of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in a suit depending in said Court between Charles Corneli, plaintiff, and George H. Moore, Collector of Internal Revenue of the United States for the First District of Missouri, defendant — was rendered against the said complainant and the said complainant has obtained an appeal of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendant citing and admonishing him to be and appear in the Supreme Court of the United States, at the City of Washington, thirty days from and after the date of said Citation.

Now the condition of the above obligation is such, That if the said complainant (appellant) shall prosecute said appeal to effect, and answer all damages and costs if he fail to make good his said plea,

hen the above obligation to be void, else to remain in full force nd virtue.

Sealed and delivered in presence of

CHARLES CORNELI, [SEAL.]
SOUTHERN SURETY COMPANY, [SEAL.]
By H. H. BUTLER, [SEAL.]
Attorney in Fact.

[Seal Southern Surety Company, Iowa.]

Approved by:
(Signed) C. B. FARIS,
Judge.

(Endorsed: "Filed Nov. 24, 1920. W. W. Nall, clerk.")
[Endorsed:] No. —. United States District Court, Eastern Division of the Eastern Judicial District of Missouri. Charles Corneli vs. Geo. H. Moore, Collector of Internal Revenue, 1st Dist. Copy of Bond. $500.00. Filed — day of —, 190–. —— ——, Clerk.

(*Præcipe for Transcript.*)

To the clerk:

You will please prepare and duly authenticate a typewritten transcript of the record in the above entitled cause for an appeal to the Supreme Court of the United States, excluding the formal and immaterial parts of the pleadings, documents and other papers, in accordance with Equity Rule 76, towit:

First. The amended bill of complaint and the order permitting the filing of the same.

Second. Motion of defendant to dismiss and entry showing the filing of the same.

Third. Record showing submission of motion to dismiss for the decision of the Court.

Fourth. Final Decree.

Fifth. Petition for allowance of appeal.

Sixth. Assignment of errors.

Seventh. Order allowing appeal.

Eighth. Citation issued on the appeal showing acknowledgment of service thereon.

Ninth. Copy of Appeal Bond.

Tenth. This præcipe.

(Signed) ELLIOTT W. MAJOR AND
G. B. ARNOLD,
Solicitors for Plaintiff.

(Endorsed: "Filed Oct. 26, 1920. W. W. Nall, clerk.")

14 UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

I, W. W. Nall, Clerk of the District Court of the United States, within and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the above and foregoing is a true and complete copy of the record (save and except as restricted by the Præcipe for Transcript, heretofore set out) in cause numbered 5282 of causes in said Court, wherein Charles Corneli is plaintiff, and George H. Moore, Collector of Internal Revenue of the United States for the First District of Missouri, is defendant, in the order called for in the Præcipe for Transcript, as fully as the same remains on file and of record in my office; that the Original Citation is hereto attached and herewith returned.

In witness whereof I hereunto subscribe my name and affix the seal of said Court, at office in the City of St. Louis, State of Missouri, in said Division of said District, this 24th day of November, A. D. 1920.

[Seal of the United States District Court, Eastern Division of the Eastern Judicial District of Missouri.]

W. W. NALL,
Clerk of said Court.
By ADAM H. JONES,
Deputy Clerk.

Endorsed on cover: File No. 27,989. E. Missouri D. C. U. S. Term No. 632. Charles Corneli, appellant, vs. George H. Moore, collector of internal revenue. Filed December 2d, 1920. File No. 27,989.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 175

GEORGE J. GEIO, APPELLANT,

vs.

GEORGE H. MOORE, COLLECTOR OF INTERNAL REVENUE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED DECEMBER 4, 1900.

(17,000)

(27,990)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 633.

GEORGE J. GHIO, APPELLANT,

vs.

GEORGE H. MOORE, COLLECTOR OF INTERNAL REVENUE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

INDEX.

	Original.	Print.
Caption	*a*	1
Amended bill of complaint	2	1
Motion to dismiss bill	5	3
Decree	7	4
Petition for appeal	8	4
Assignment of errors	9	5
Citation and service	11	6
Bond on appeal	12	7
Præcipe for record	13	8
Clerk's certificate	15	8

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 3, 1920.

a In the United States District Court Within and for the Eastern Division of the Eastern Judicial District of Missouri.

No. 5295.

GEORGE J. GHIO, Plaintiff,

vs.

GEORGE H. MOORE, etc., Defendant.

TRANSCRIPT OF THE RECORD ON APPEAL.

1 UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

Be it remembered that heretofore, towit, on the 26th day of October, A. D., 1920, there was filed in the office of the Clerk of the District Court of the United States, within and for the Eastern Division of the Eastern Judicial District of Missouri, in cause numbered 5295 of causes in said court, wherein George J. Ghio is Plaintiff, and George H. Moore, Collector of Internal Revenue of the United States for the First District of Missouri, is defendant, a Præcipe for Transcript, which said Præcipe for Transcript, and the pleadings and proceedings called for therein, and in the order called for therein, are in words and figures as follows, towit:

2 (*Amended Bill in Equity.*)

To the Hon. Charles B. Faris, Judge of the United States District Court:

George J. Ghio, citizen and resident of the City of St. Louis, and State of Missouri, brings this amended bill of complaint against George H. Moore, citizen and resident of said City and State, and respectfully shows unto this Honorable Court, as follows:

That the full name of the complainant in this original bill of G. J. Ghio, filed in this court on the — day of ——, 1920, against the above named defendant, is George J. Ghio, and this amended bill is filed in said cause in the full name of said complainant; that the defendant is Collector of Internal Revenue, of the United States, for the First Internal Revenue District, of the State of Missouri, and as such is charged by law with the duty of collecting and receiving taxes due the United States, on distilled spirits, in Government Bonded Warehouses, in said District, and, upon payment of the taxes due on said spirits by the owners thereof, to issue internal revenue stamps showing the payment of the taxes due the United States on said spirits, and to release said spirits to the owners thereof; that the Government Bonded Warehouses in said District and the

distilled spirits on deposit therein and the keys to said Warehouses and the right of ingress and egress from and to the same are
3 now in the custody and control of defendant.

That complainant is the owner of a barrel of distilled spirits, hereinafter described, and that he became the owner thereof on or about the 28th day of February, 1920, by purchasing, for a valuable consideration, a warehouse receipt covering said spirits; that said spirits are now in possession of defendant and deposited in Government General Bonded Warehouse No. 1, of the United States, located at Boyle and Duncan Avenues, in said City and State, and in the First United States Internal Revenue District of said State; that said spirits are contained in a barrel, numbered 125215, and were produced by the Geo. T. Stagg Distilling Company, located in the County of Franklin, in the State of Kentucky; that complainant is unable to state the exact number of taxable gallons of spirits contained in said barrel; but believes the same to contain approximately Forty-eight (48) taxable gallons; that complainant has not tendered to the defendant the money due the United States as taxes on said spirits, because he is not informed or advised of the exact amount due thereon, and for the further reason that the defendant has announced that he will not accept the tax due on said spirits or issue to complainant revenue stamps showing the payment of said tax or release said spirits to complainant unless complainant first obtain from the United States a permit authorizing him to secure the release of said spirits from bond; that complainant desires to obtain possession of said spirits, his private property, and to transport the same to his private dwelling, in the City of St. Louis, which is occupied and used by complainant as his dwelling only; that he does not desire the possession of said spirits for the purposes or barter or sale, or of using or disposing of the same in violation of any law of the United States; that the Act of Congress of October 28, 1919, commonly known as the Volstead Act, expressly legalized the purchase of said spirits by complainant, and thereby the transportation of the same to his private dwelling; that defendant's refusal to release said spirits to complainant is wrongful and illegal and in violation of said Act of Congress, and also in violation of the Fifth Amend-
4 ment to the Constitution of the United States, in this, towit, complainant is deprived of his property without due process of law; the withholding of possession of said spirits from complainant is a taking of his private property for public use without just compensation.

Complainant further states that he is ready, willing and able to pay the tax due the United States on the aforesaid spirits, when the same are gauged by the United States gauger in charge of said Warehouse; that the announcement of the defendant of his intention and determination not to accept or receive payment by complainant of the tax due on said spirits, and his refusal to accept such payment, is wrongful and illegal and without authority of law.

Wherefore, complainant prays this Honorable Court to grant him a writ of subpœna directed to the defendant, commanding him to

appear and answer this complaint, and for a decree ordering and directing the defendant to receive the aforesaid tender and to issue to complainant internal revenue stamps showing the payment of the said tax, and to release said spirits to complainant, and for such other and further orders and decrees as to the Court shall seem just and equitable.

(Signed) ELLIOTT W. MAJOR,
(Signed) GLENDY B. ARNOLD,
Attorneys for Complainant.

STATE OF MISSOURI,
City of St. Louis, ss:

I, George J. Ghio, being duly sworn, depose and say that I am the complainant in the foregoing amended bill of complaint; that I have read the same and know the contents thereof; that in so far as the same are allegations of fact, they are true of my own knowlege.

(Signed) GEORGE J. GHIO.

Subscribed and sworn to before me this 6th day of October 1920. My Commission expires July 2, 1923.

[Notary Seal.] (Signed) OLIVER F. ERBS,
Notary Public.

(Endorsed: "Filed Oct. 7, 1920. W. W. Nall, Clerk.")

5 *(Motion to Dismiss Bill.)*

Now comes the Defendant in the above entitled action, and by leave of Court, moves to dismiss complainant's bill herein for the following reasons, to-wit:

First. The suit in effect is one against the United States and the bill does not aver or show that the United States has consented to be sued herein.

Second. The facts alleged in the bill are insufficient to constitute a valid cause of action in equity.

Third. The Court has no jurisdiction to grant the relief prayed for or any part thereof.

Fourth. The bill does not present a cause of action in equity under the Constitution of the United States.

Fifth. The bill does not disclose a cause of action equitable in its nature, civil in its character, and arising under the Constitution of the United States.

Sixth. The bill on its face shows that by the suit it is sought to obtain a decree of this Court without authority of law, commanding, ordering and directing defendant to receive from complainant the tax said to be due on certain distilled spirits mentioned in said bill

and to issue complainant internal revenue stamps showing the payment of said tax and to release said spirits to complainant.

Seventh. The Court judicially knows that the relief sought in and by said bill is forbidden and prohibited by law, and particularly by the Act of Congress known and designated as the "National
6 Prohibition Act", which is a valid and subsisting law.

Eighth. It appears from the bill that the complainant has a plain, adequate and complete remedy at law.

Wherefore the defendant says that he should not be held to answer to the bill or to the several allegations thereof above referred to, but that said bill should be dismissed with costs to the complainant.

(Signed) W. L. HENSLEY,
United States Attorney.
(Signed) BENJ. L. WHITE,
Assistant United States Attorney,
Solicitors for Defendants.

(Endorsed: "Filed Mar. 25, 1920. W. W. Nall, clerk." "Refiled Oct. 7, 1920. W. W. Nall, clerk.")

7 *Amended Bill of Complaint (and Record Entry Showing Filing of Motion to Dismiss, Motion Submitted to the Court, Final Decree).*

Now at this day comes said complainant by his solicitor, and, by leave of Court, files an amended bill of complaint in this cause; and comes also said defendant appearing by the United States Attorney for the Eastern District of Missouri and re-files his motion to dismiss herein, which motion is now submitted by counsel to the Court; upon due consideration whereof, and for the reasons stated in the opinion heretofore filed in this cause, the Court doth

Order that said motion be sustained and that the amended bill of complaint herein be and the same is hereby dismissed, for want of equity, at the costs of said complainant, for which costs let execution issue.

October 7th, 1920.
(Signed) C. B. FARIS,
Judge.

8 (*Petition for Appeal.*)

To the Hon. Charles B. Faris, Judge of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri:

The above named plaintiff, George J. Ghio, believing himself aggrieved by the decree made and entered in this cause on the 7th day of October, 1920, dismissing plaintiff's amended bill of complaint, does hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors

which is filed herewith, and plaintiff prays that his appeal may be allowed, and that citation issue as provided by law, and that a transcript of the record, upon which said decree was based, duly authenticated, may be sent to the United States Supreme Court.

(Signed) ELLIOTT W. MAJOR AND
G. B. ARNOLD,
Solicitors for Plaintiff.

Appeal granted as prayed.
(Signed) C. B. FARIS,
Judge.

(Endorsed: "Filed Oct. 26, 1920. W. W. Nall, clerk.")

9 (*Assignment of Errors.*)

Now comes the plaintiff in the above entitled cause and respectfully complains that the decree entered in said cause on the 7th day of October, 1920, is erroneous and prejudicial to plaintiff in the following particulars:

I.

The court erred in sustaining the defendant's motion to dismiss said amended bill and in entering a decree in dismissing said bill.

II.

Said decree deprives the plaintiff of the protection of the Fifth Amendment to the Constitution of the United States, in that it sanctions the taking of the plaintiff's private property without due process of law, and the taking of plaintiff's private property for a public use without any compensation.

III.

Said decree is neither supported nor sustained by the Eighteenth Amendment to the Constitution of the United States.

IV.

In rendering said decree, the Court erroneously held the Fifth and the Eighteenth Amendments to be in conflict.

10 V.

Under the allegations of plaintiff's amended bill he is entitled to a decree against the defendant compelling and directing the defendant to release to plaintiff the spirits described in said amended bill.

VI.

Said decree is in violation of the Act of Congress of October 28th, 1919, commonly known as the Volstead Act.

Wherefore, plaintiff prays that said decree be reversed; that the Supreme Court cause the proper decree to be entered directing the defendant to release to the plaintiff, without the requirement of a permit, the spirits described in plaintiff's amended bill, and for such other and further relief as the plaintiff may be entitled to receive.

(Signed) ELLIOTT W. MAJOR AND
G. B. ARNOLD,
Solicitors for Plaintiff.

(Endorsed: "Filed Oct. 26, 1920. W. W. Nall, clerk.")

11 The United States of America to George H. Moore, Collector of Internal Revenue of the United States for the First District of Missouri, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, thirty days from and after the day this Citation bears date, pursuant to an appeal allowed and filed in the Clerk's office of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, wherein George J. Ghio is appellant, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Charles B. Faris, Judge of the District Court of the United States within and for the Eastern District of Missouri, this 26 day of October, in the year of our Lord one thousand nine hundred and twenty.

C. B. FARIS,
United States District Judge for the Eastern District of Missouri.

Service hereby acknowledged 10/26/20.
J. E. CARROLL,
U. S. Atty.

[Endorsed:] No. 5295. United States District Court, Eastern Division of the Eastern Judicial District of Missouri. George J. Ghio, appellant, vs. George H. Moore, collector. Citation. Filed Oct. 26, 1920. W. W. Nall, clerk.

12 (*Appeal Bond.*)

Know all men by these presents that we, George J. Ghio as principal, and Southern Surety Company, as surety, are held and firmly bound unto George H. Moore, collector of internal revenue, United States for the First District of Missouri in the full and just sum of five hundred ($500.00) dollars to be paid to the said George H. Moore, collector of internal revenue, United States for the First District of Missouri, his successors or assigns: to which payment well and truly to be made, said Principal binds himself, his heirs, executors, and administrators, and said Surety binds itself, its successors or assigns jointly and severally by these presents. Sealed with our seals, and dated this 24th day of November, in the year of our Lord one thousand nine hundred and twenty.

Whereas, lately at the September term, A. D. 1920, of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in a suit depending in said Court between George J. Ghio, plaintiff and George H. Moore, collector of internal revenue of the United States for the First District of Missouri, defendant, was rendered against the said Complainant and the said Complainant has obtained an Appeal *of* the said Court to reverse the Judgment in the aforesaid suit, and a citation directed to the said Defendant citing and admonishing him to be and appear at the Supreme Court of the United States, at the City of Washington, thirty days from and after the date of said Citation.

Now the condition of the above obligation is such, that if the said Complainant (Appellant) shall prosecute said Appeal to effect, and answer all damages and costs if he fail to make good his said plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

GEORGE J. GHIO. [SEAL.]
[Corporate Seal.] SOUTHERN SURETY COMPANY, [SEAL.]
By H. H. BUTLER, [SEAL.]
Attorney in Fact.

Approved by

(Signed) C. B. FARIS,
Judge.

(Endorsed: "Filed Nov. 24, 1920. W. W. Nall, clerk.")

[Endorsed:] No. —. United States District Court, Eastern Division of the Eastern Judicial District of Missouri. George J. Ghio vs. Geo. H. Moore, collector of internal revenue, 1st District. Bond. Copy. $500.00.

13 (*Præcipe for Transcript.*)

To the clerk:

You will please prepare and duly authenticate a typewritten transcript of the record in the above entitled cause for an appeal to the Supreme Court of the United States, excluding the formal and immaterial parts of the pleadings, documents and other papers, in accordance with Equity Rule 76, to wit:

First. The amended bill of complaint and the order permitting the filing of the same.

Second. Motion of defendant to dismiss and entry showing the filing of the same.

Third. Record showing submission of motion to dismiss for the decision of the Court.

Fourth. Final decree.

Fifth. Petition for allowance of appeal.

Sixth. Assignment of errors.

Seventh. Order allowing appeal.

Eighth. Citation issued on the appeal showing acknowledgment of service thereon.

14 Ninth. Copy of Appeal Bond.

Tenth. This præcipe.

(Signed) ELLIOTT W. MAJOR AND
G. B. ARNOLD.

(Endorsed: "Filed Oct. 26, 1920. W. W. Nall, clerk.")

15 UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

I, W. W. Nall, Clerk of the District Court of the United States, within and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the above and foregoing is a true and complete copy of the record (save and except as restricted by the Præcipe for Transcript, heretofore set out) in cause numbered 5295 of causes in said Court, wherein George J. Ghio is plaintiff, and George H. Moore, Collector of Internal Revenue of the United States for the First District of Missouri, is defendant, in the order called for in the Præcipe for Transcript, as fully as the same remains on file and of record in my office; that the Original Citation is hereto attached and herewith returned.

In witness whereof I hereunto subscribe my name and affix the seal of said Court, at office in the City of St. Louis, State of Missouri, in said Division of said District, this 24th day of November, A. D. 1920.

[Seal of the United States District Court, Eastern Division of the Eastern Judicial District of Missouri.]

W. W. NALL,
Clerk of said Court,
By ADAM H. JONES,
Deputy Clerk.

Endorsed on cover: File No. 27,990. E. Missouri D. C. U. S. Term No. 633. George J. Ghio, appellant, vs. George H. Moore, collector of internal revenue. Filed December 2d, 1920. File No. 27,990.

(2695)

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 428.

WILLIAM H. BRYAN, APPELLANT,

vs.

JOSHUA W. MILES, COLLECTOR OF INTERNAL REVENUE OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND, AND RICHARD S. DODSON, FEDERAL PROHIBITION DIRECTOR FOR THE STATE OF MARYLAND.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED JULY 18, 1921.

(28,263)

(28,383)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 428.

WILLIAM H. BRYAN, APPELLANT,

vs.

JOSHUA W. MILES, COLLECTOR OF INTERNAL REVENUE OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND, AND RICHARD S. DODSON, FEDERAL PROHIBITION DIRECTOR FOR THE STATE OF MARYLAND.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

INDEX.

	Original	Print.
Caption	1	1
Amended bill of complaint	2	1
Exhibit No. 1—Application for permit, etc	9	6
2—Refusal of permit	11	8
3—Tender of tax and refusal to accept same	12	9
Motion to dismiss amended bill of complaint	14	11
Order of court dismissing bill of complaint	16	12
Petition for appeal and order of court allowing same	17	12
Assignment of errors	19	13
Appeal bond	21	14
Citation and service	23	15
Stipulation of counsel as to making up record on appeal	24	16
Memorandum of the clerk	25	17
Order to transmit record	25	17
Clerk's certificate	26	17

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 27, 1921.

1 TRANSCRIPT OF RECORD.

UNITED STATES OF AMERICA,
District of Maryland, To wit:

At a District Court of the United States for the District of Maryland Begun and Held in the City of Baltimore on the First Tuesday in June (Being the 7th Day of the Same Month), in the Year of Our Lord One Thousand Nine Hundred and Twenty.

Present:

The Honorable John C. Rose, Judge Maryland District
Robert R. Carman, Esq., Attorney.
William W. Stockhan, Esq., Marshal.
Arthur L. Spamer, Clerk.

Among other were the following proceedings, to wit:

No. 233. Equity.

WILLIAM H. BRYAN
vs.
JOSHUA W. MILES, Collector of Internal Revenue of the United States for the District of Maryland, and Richard S. Dodson, Federal Prohibition Director for the State of Maryland.

2 *Amended Bill of Complaint.*

Filed 24th June, 1921.

In the District Court of the United States for the District of Maryland.

WILLIAM H. BRYAN, Complainant,
vs.
JOSHUA W. MILES, Collector of Internal Revenue of the United States for the District of Maryland, and Richard S. Dodson, Federal Prohibition Director for the State of Maryland, Defendants.

(Amended Bill in Equity.)

To the Honorable John C. Rose, Judge of the United States District Court for the District of Maryland:

William H. Bryan, a citizen and resident of Baltimore County and State of Maryland, brings this amended Bill of Complaint against Joshua W. Miles, a citizen of the State of Maryland and a

resident of Somerset County, in the said State, and Collector of Internal Revenue of the United States for the District of Maryland, and Richard S. Dodson, a citizen of Maryland and a resident of Talbot County, in the said State, and Federal Prohibition Director for the State of Maryland, respectfully shows unto this Honorable Court.

1. That the defendant, Joshua W. Miles, as such Collector of the Revenue, is charged by law with the duty of collecting and receiving taxes due the United States on distilled spirits in Government bonded warehouses in the said district, and upon the payment of the taxes due on the said distilled spirits by the owners thereof to issue internal revenue stamps showing the payment of the taxes due the United States on the said spirits, and upon permits duly issued by the defendant, Richard S. Dodson, to release said spirits to the owners thereof; that the Government bonded warehouses in the said
3 district, and the said distilled spirits on deposit therein, and the keys to the said warehouses and the right to ingress and egress from and to the same, are now in the custody and control of the defendant, Joshua W. Miles;

2. That Richard S. Dodson, the Federal Prohibition Director of Maryland, was appointed to that office by the Commissioner of Internal Revenue of the United States, and that he qualified as such and is now acting agent or assistant of the said Commissioner of Internal Revenue of the United States; and that under the Act of Congress of the United States of October 28th, 1919, entitled the "National Prohibition Act", the defendant, Richard S. Dodson, is charged with the duty of issuing permits for the delivery, transportation and possession of distilled spirits to persons authorized by said Act to accept delivery of, transportation and possession of said spirits, and upon the issuance of said permits by the said defendant, Dodson, to the owners of spirits on deposit in said Government bonded warehouses and presentation of the same to the said defendant, Miles, on the payment to the United States of the taxes due thereon, it is the duty of the said Dodson to release said spirits and deliver the same to said permittee;

3. That the complainant, William H. Bryan, is the owner of one barrel of distilled spirits, commercially known as "Pikesville Pure Rye Whiskey", hereinafter described, and became the owner thereof and has owned the same ever since the 2nd day of October 1919; that the said spirits are now on deposit in Government bonded warehouse known as Distillery Bonded Warehouse "E" (of the United States) of Registered Distillery No. 25, located at Pikesville, in Baltimore County, in the State of Maryland, and in the United States Internal Revenue District for the State of Maryland; that the said spirits are contained in a wooden barrel numbered 43892, containing approximately Forty (40) taxable gallons, produced by
4 the Pikesville Distillery Company at Registered Distillery No. 25, situated in Baltimore County, in the State of Maryland, in the United States Internal Revenue District for the State of Maryland; that there is now due the United States as tax on the aforesaid spirits of the complainant the sum of $256.00;

4. That the complainant has heretofore on the 8th day of April, 1921, presented to the defendant, Richard S. Dodson, Federal Prohibition Director for the State of Maryland, a verified written application, setting forth the qualification of the applicant, and that he desires to obtain delivery and to transport said spirits to his private dwelling situated in Baltimore County, in the State of Maryland, which is occupied by him as his dwelling only, for the personal consumption of himself and his family residing in such dwelling and for his bona fide guests when entertained by him therein; all of which appear in an examination of the said verified application heretofore filed and marked "Complainant's Exhibit No. 1"; that said defendant, Dodson, wrongfully and without authority of law, refused to grant the complainant the permit applied for as aforesaid, all of which will appear by an examination of the written refusal of the said defendant, Dodson, filed heretofore and marked "Complainant's Exhibit No. 2";

5. That the complainant has tendered to the defendant, Joshua W. Miles, Collector of Internal Revenue for the District of Maryland, the full amount of the tax due the United States on the said spirits as aforesaid, and has demanded of the said defendant that he issue to the complainant United States Internal Revenue stamps showing the payment of the aforesaid tax on the said spirits and that he release said spirits, all of which will appear more fully by an examination of the written tender of the said tax and demand made upon the said Miles, filed heretofore and marked "Complainant's Exhibit No. 3"; that the said defendant, Miles, refused, and still refuses, to accept the said tender and issue Internal Revenue Stamps therefor, or to release the said spirits, as shown by his written refusal endorsed on said Exhibit No. 3;

6 That the complainant desires to obtain possession of the said spirits as his private property and to transport the same to his private dwelling, situated on the south side of the Court Road near Green Spring Avenue, in Baltimore County, Maryland, which said dwelling is occupied and used by the complainant as his dwelling only, and to keep the same in the said dwelling for the personal use of himself, the members of his family, and his bona fide guests when entertained therein; that he does not desire the possession of the said spirits for the purpose of barter or sale, or disposing of the same in violation of any law of the United States;

7. That in refusing to grant the permit for the delivery of said spirits and to accept the tender of taxes thereon and to issue Internal Revenue stamps therefor, as aforesaid, the defendants have claimed to act under the terms and authority of an Act of Congress passed on or about October 28, 1919, commonly known as the Volstead Act. But your complainant is advised and accordingly avers that the said Volstead Act contains no provisions which required or authorized the defendants to refuse said permit or to decline to receive payment of said taxes, as aforesaid, for the reason, among others, that said spirits were purchased by the complainant, as aforesaid, prior to the effective date of the said Volstead Act, and that he purchased said

spirits, as aforesaid, solely for delivery to his dwelling and solely for the personal use of himself, his family and his bona fide guests while being entertained therein, as herein before set forth. And this complainant further avers that the removal of the said distilled spirits from the said United States Bonded Warehouse to his residence for the purpose above specified, on the payment of
6 the tax thereon, is not forbidden by the Eighteenth Amendment of the said Volstead Act. And this complainant is further advised and therefore alleges that if said Volstead Act is susceptible of a construction authorizing or justifying the action of the defendants in refusing to permit the removal of said spirits to his residence for the purpose above specified on payment of the tax thereon, so much of said statute is unconstitutional, void and of no effect, for the reason that it transcends the power of Congress under the Eighteenth Amendment to the Constitution of the United States, deprives the plaintiff of his property without due process of law and without just compensation, and denies him the equal protection of the laws, contrary to the Fifth Amendment to the Constitution of the United States.

Wherefore the complainant prays:

(1) That this Honorable Court issue its writ of injunction directed to the defendant, Richard S. Dodson, Federal Prohibition Director for the State of Maryland, directing him to grant and issue to the complainant the permit applied for by him as aforesaid, and enjoining him from preventing or interfering with the removal by the complainant of the distilled spirits aforesaid from said bonded warehouse to his, the complainant's, private dwelling for lawful use and consumption as hereinbefore set forth.

(2) That this Honorable Court issue its writ of injunction directed to the defendant, Joshua W. Miles, Collector of Internal Revenue for the District of Maryland, restraining and strictly enjoining him, upon payment or due rendered by the complainant of all taxes lawfully due to the United States on or in respect of the distilled spirits hereinbefore mentioned, from longer refusing to issue revenue stamps showing payment of such taxes on said spirits, or from refusing to release said spirits to the complainant as aforesaid; and from longer denying the complainant access to said
7 spirits in said bonded warehouse, or preventing him from taking and having possession of said spirits therein for the purpose — removing them to his, the complainant's private dwelling for lawful use and consumption as hereinbefore set forth, and from preventing or interfering with the removal by the complainant of said spirits from said warehouse for the purpose aforesaid, and from longer detaining and withholding from the complainant the lawful possession of his spirits as aforesaid; and also directing and requiring said defendant, on payment or due tender of taxes as aforesaid, to deliver said distilled spirits to the complainant and to permit him to take possession of and remove the same from said bonded warehouse to the complainant's said dwelling for lawful consumption as hereinbefore set forth.

(3) That the complainant may have such other and further relief as his case may require.

May it please your Honor to grant unto this complainant a Writ of Subpoena directed to the defendant, Joshua W. Miles, Collector of Internal Revenue for the District of Maryland, and the defendant, Richard S. Dodson, Federal Prohibition Director for the State of Maryland, commanding them and each of them to be and appear, either in person or by solicitor, in this Honorable Court on or before a certain day therein to be named, and to answer this Bill of Complaint and to show cause, if any they have, why a decree ought not to be passed as prayed.

And as in duty bound, etc.

JULIAN S. JONES,
J. WALLACE BRYAN,
JAMES T. O'NEILL,
ELLIOTT W. MAJOR,
Attorneys for Complainant.

WILLIAM H. BRYAN,
Complainant.

STATE OF MARYLAND,
City of Baltimore, To wit:

I hereby certify, that on the 23rd day of June, Nineteen Hundred and Twenty-one, before the subscriber, a Notary Public of the State of Maryland, in and for the City aforesaid, personally appeared William H. Bryan and made oath in due form of law that the matters and facts stated in the foregoing Bill of Complaint are true to the best of his knowledge and belief.

Witness my hand and Notarial seal.

[NOTARY'S SEAL.] HOWARD D. ADAMS,
Notary Public.

Leave to file the above amended Bill of Complaint granted this 24th day of June, 1921.

JOHN C. ROSE,
United States District Judge.

9 EXHIBIT No. 1.

Filed 20th April, 1921.

Application for Permit to Remove and Transport Beverage Liquor.

Baltimore, Md., April 8th, 1921.

To R. S. Dodson,
Federal Prohibition Director
At Baltimore, State of Maryland:

The undersigned hereby makes application for a permit to remove the liquor described below and now stored in premises known as Distillery Bonded Warehouse "E" of Registered Distillery No. 25 at Pikesville, Baltimore County, Maryland, the said premises being used as a United States Bonded Warehouse for the purpose of storing liquor and now being in the custody and control of Joshua W. Miles, Collector of Internal Revenue of the United States for the District of Maryland; and the undersigned further makes application for permit to transport from the said Distillery Bonded Warehouse "E" the said liquor described below to the residence of the undersigned, situated on the south side of Court Road near Green Spring Avenue, in Baltimore County, Maryland, known as "Litterlouna" which said premises are used by the undersigned as his private residence and home and is now occupied by the undersigned, such transportation to be completed on or before the 15th day of April, 1921.

Description of Liquor.

Kind of liquor. (1)	No. and kind of packages. (2)	Serial Nos. of packages, if any. (3)	Quantity in wine gallons. (4)	Date when, how, and from whom procured. (5)
Distilled spirits, commercially known as "Pikesville Pure Rye Wiskey."	Contained in wooden barrel.	No. 3892.....	Approx. 39½.....	Purchased by the undersigned, W. H. Bryan, on Oct. 2, 1919, from M. C. Winand, Warehouse Certificate No. 1261, representing and transferring the title to and ownership of the said distilled spirits.

10 The undersigned swears that the above statements a
true, and that he purchased the said warehouse certifica
No. 1261, representing the title to and the ownership of above d
scribed liquor for his own personal use, the said liquors to be use
only by himself and his family at his own residence, and for h
bona fide guests when entertained by him therein; and he furth
swears that he does not desire the possession of the said spirits f
the purpose of barter or sale, or for the purpose of disposing of th
same in violation of any law of the United States, and that he is th
sole owner of the liquors described above, and that they were legall
acquired and may be legally used for beverage purposes in h
dwelling, and that before removing and transporting the same h
intends to fully comply with all the laws of the United States an
pay to the Collector of Internal Revenue the full beverage ta
thereon.

WM. H. BRYAN.

STATE OF MARYLAND,
City of Baltimore, To wit:

I hereby certify that on this 8th day of April, 1921, before th
subscriber, a Notary Public of the State of Maryland, in and for th
City aforesaid, personally appeared W. H. Bryan and made oath i
due form of law that the matters and facts stated in the above appli
cation are true to the best of his knowledge and belief.

Witness my hand and Notarial Seal.

[SEAL.] HOWARD D. ADAMS,
Notary Public.

11 EXHIBIT No. 2.

(*Refusal of Permit.*)

Filed 20th April, 1921.

Treasury Department,
Internal Revenue Service,
Baltimore, Md. R. S. D. s.

Office of
Federal Prohibition Director,
State of Maryland & Dist. of Columbia.

Mr. William H. Bryan, April 8, 1921.
Court Road near Green Spring avenue,
Pikesville, Baltimore County,
Maryland.

DEAR SIR:

Your application for permit to remove and transport beverage
liquor from distillery bonded warehouse "E" of Registered Distillery

No. 25 at Pikesville, Baltimore County, Maryland, upon a form specially prepared by your Attorney, to your home at the above-stated address for beverage purposes, has been received. In answer thereto, I desire to inform you that upon instructions which I have received from the Department at Washington, a permit cannot be granted for the withdrawal and transportation of liquor held in a bonded warehouse to the home of the owner for personal use.

It is the opinion of the Department that the recent decision rendered by the Supreme Court in the case of William C. Street vs. the Lincoln Safe Deposit Company and Daniel L. Porter extends only to liquor that was in such condition with respect to tax liability and other governmental obligations at the beginning of the 17th day of January, 1920, that it might legally have been in the home of the owner without change of such condition. Liquor held on January 17, 1920, in bond without tax payment was not in such condition and, therefore, may not now be removed to the homes of the owners for beverage purposes.

Yours truly,

RICHARD S. DODSON,
Federal Prohibition Director.

12 EXHIBIT No. 3.

Filed 20th April, 1921.

Tender of Tax.

Baltimore, Md., April 8th, 1921.

To Joshua W. Miles,
Collector of Internal Revenue
for the District of Maryland,
Baltimore, Md.

DEAR SIR:

I, W. H. Bryan, the undersigned, hereby tender to you the sum of Two Hundred Fifty Six Dollars ($256.00) for the purpose of paying the United States tax on one barrel of distilled spirits, the said barrel containing approximately 40 proof gallons, commercially known as "Pikesville Pure Rye Whiskey," being Serial No. 43892, and stored in Distillery Bonded Warehouse "E" of Registered Distillery No. 25 at Pikesville, Baltimore County, Maryland, the said premises being used as a United States Bonded Warehouse for the purpose of storing liquor and now being in your custody and control as the Collector of Internal Revenue of the United States for the District of Maryland. The said distilled spirits were purchased by me on October 2nd, 1919, from M. C. Winand, for my own personal use and to be used by me and my family at my residence, and by my bona fide guests when entertained by me therein; and I do not desire possession of the said spirits for the purpose of barter or sale or for the purpose of disposing of the same in violation of any law of the United States; and I am sole owner of the said liquors above

described, and they were legally acquired by me and will be legally used for beverage in my own dwelling.

I now desire to pay the tax on the same *on the same* and hereby hand you $256.00, being the approximate tax at the beverage rate of $6.40 per gallon, and I hereby request you to issue to me United States Revenue stamps showing the payment of the aforesaid tax on said spirits, and desire to have you order the said spirits to be gauged and released from the said Distillery Bonded Warehouse "E" of Registered Distillery No. 25 at Pikesville, and upon the re-
13 lease of the same I intend to transport the same to my residence, situated on the south side of Court Road near Green Spring Avenue, in Baltimore County, Maryland; and I hereby exhibit to you the original certificate of the Pikesville Distilling Company, showing the Serial number of the said barrel of distilled spirits to be 43892.

Respectfully yours,

WM. H. BRYAN.

STATE OF MARYLAND,
City of Baltimore, To wit:

I hereby certify that on this 8th day of April, 1921, before the subscriber, a Notary Public of the State of Maryland, in and for the City aforesaid, personally appeared W. H. Bryan and made oath in due form of law that the matters and facts stated in the above application are true to the best of his knowledge and belief.

Witness my hand and Notarial Seal.

[SEAL.] HOWARD D. ADAMS,
Notary Public.

April 9, 1921. L. M. M.

This application for withdrawal is hereby refused as this office is prohibited from issuing taxpaid stamps for withdrawal of spirits from bond unless the application therefor is accompanied by permit from the Prohibition Director on Form 1410.

JOSHUA W. MILES,
Collector.

14 *Motion to Dismiss Amended Bill of Complaint.*

Filed 24th June, 1921.

In the District Court of the United States for the District of Maryland.

WILLIAM H. BRYAN, Complainant,

vs.

JOSHUA W. MILES, Collector of Internal Revenue of the United States for the District of Maryland, and Richard S. Dodson, Federal Prohibition Director for the State of Maryland, Defendants.

Motion to Dismiss Amended Bill.

Now come the defendants in the above entitled action, and with leave of court, pray to dismiss the complainant's amended bill herein for the following reasons, to wit:

First. That the suit is in effect one against the United States and the amended Bill does not aver nor does it show that the United States has consented to be sued herein;

Second. That the facts alleged in the bill are insufficient to constitute a valid cause of action in equity;

Third. That the court has no jurisdiction to grant the relief prayed for or any part thereof;

Fourth. That the bill does not disclose a cause of action equitable in its nature, or civil in its character and arising under the Constitution of the United States;

Fifth. That it appears from the face of the bill that the defendants lawfully refused to receive the tax and issue the permit as requested of them by the complainant;

Sixth. That it appears from the face of the bill that the refusal of the defendants to accept the tax and to issue the permit requested of them by the complainant does not deny the complainant any of his rights secured to him under the constitution and laws of the United States;

15 Wherefore, the defendant says that he should not be held to answer the amended bill or the several allegations thereof and that the said amended bill should be dismissed.

ROBT. R. CARMAN,
United States Attorney.

16 *Order of Court Dismissing Bill of Complaint.*

Filed 24th June, 1921.

In the District Court of the United States for the District of Maryland.

WILLIAM H. BRYAN

vs.

JOSHUA W. MILES, etc.

The motion in this case to dismiss the Bill of Complaint coming on for hearing, and argument of counsel being heard and considered, it is this 24th day of June, 1921,

Ordered, Adjudged and Decreed by the United States District Court for the District of Maryland, that the Bill of complaint be and the same is hereby dismissed.

JOHN C. ROSE,
District Judge.

17 *Petition for Appeal and Order of Court Allowing Same.*

Filed 8th July, 1921.

In the District Court of the United States for the District of Maryland.

WILLIAM H. BRYAN, Complainant,

vs.

JOSHUA W. MILES, Collector of Internal Revenue of the United States for the District of Maryland, and Richard S. Dodson, Federal Prohibition Director for the State of Maryland, Defendants.

(Petition for Appeal.)

To the Honorable John C. Rose, Judge of the United States District Court for the District of Maryland:

The above named complainant, William H. Bryan, believing himself aggrieved by the decree made and entered in this cause on the 24th day of June, 1921, dismissing the complainant's amendment bill of complaint, does hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors which is filed herewith, and the complainant prays that his appeal may be allowed, and that citation issue as provided by law, and that a transcript of the record, upon which said decree was based, duly authenticated, may be sent to the United States Supreme Court.

JULIAN S. JONES,
J. WALLACE BRYAN,
JAMES T. O'NEILL,
ELLIOTT W. MAJOR,
Solicitors for Complainant.

18 Ordered by the District Court of the United States for the District of Maryland this 8 day of July, 1921, that the Appeal prayed for be allowed, and that the penalty of the Appeal Bond be, and the same is hereby fixed, at the sum of $300.

JOHN C. ROSE,
U. S. District Judge.

19 *Assignment of Errors.*

Filed 8th July, 1921.

In the District Court of the United States for the District of Maryland.

WILLIAM H. BRYAN, Complainant,

vs.

JOSHUA W. MILES, Collector of Internal Revenue of the United States for the District of Maryland, and Richard S. Dodson, Federal Prohibition Director for the State of Maryland, Defendants.

(Assignment of Errors.)

To the Honorable John C. Rose, Judge of the United States District Court for the District of Maryland:

Now comes the complainant in the above entitled cause and respectfully complains that the decree entered in said cause on the 24th day of June, 1921, is erroneous and prejudicial to the complainant in the following particulars:

1. The Court erred in sustaining the defendants' motion to dismiss said amended bill and in entering a decree in dismissing said bill.

2. Said decree deprives the complainant of the protection of the Fifth Amendment to the Constitution of the United States, in that it sanctions the taking of the complainant's private property without due process of law, and the taking of the complainant's private property for a public use without any compensation.

3. Said decree is neither supported nor sustained by the Eighteenth Amendment to the Constitution of the United Statees.

4. The Court erred in holding that the National Prohibition Act forbids the removal by the complainant of the spirits men-
20 tioned in the amended bill of complaint from the bonded warehouse to his residence for the lawful consumption of himself, his family and his bona fide guests.

5. The Court erred in holding that it is not the duty of the defendant, Joshua W. Miles, as Collector of International Revenue, to issue stamps on payment of the federal taxes on said distilled spirits, and to issue a permit for the removal thereof by the com-

plainant from the bonded warehouse to his bona fide residence for the purposes specified in the amended bill of complaint.

6. The Court erred in holding that it was not the duty of the defendant, Joshua W. Miles, as Collector of Internal Revenue, to release unto the complainant the possession of the distilled spirits mentioned in the amended bill of complaint and now in the bonded warehouse as therein stated.

7 The Court erred in holding that it was not the duty of the defendant, Richard S. Dodson, as Federal Prohibition Director for the State of Maryland, to issue to the complainant a permit for the removal by him of the distilled spirits mentioned in the amended bill of complaint from the bonded warehouse to the complainant's bona fide residence for the purposes specified in said amended bill.

8. Under the allegations of the complainant's amended bill he is entitled to a decree against the defendants compelling and directing the defendants to release to the complainant the spirits described in said amended bill.

Wherefore, the complainant prays that said decree be reversed; that the Supreme Court cause the proper decree to be entered directing the defendants to release to the complainant, without the requirement of a permit, the spirits described in the complainant's amended bill, and for such other and further relief as the complainant may be entitled to receive.

JULIAN S. JONES,
J. WALLACE BRYAN,
JAMES T. O'NEILL,
ELLIOTT W. MAJOR,
Solicitors for Complainant.

21 *Appeal Bond.*

Filed 15th July, 1921.

New Amsterdam Casualty Company,

227 St. Paul Street, Baltimore, Md.;

60 John Street, New York.

Know all men by these presents, that we, William H. Bryan, as Principal, and the New Amsterdam Casualty Company, as surety, are held and firmly bound unto Joshua W. Miles, collector of Internal Revenue of the United States for the District of Maryland, and Richard S. Dodson, Federal Prohibition Director for the State of Maryland, in the full and just sum of Three Hundred ($300.00) Dollars to be paid to the said Joshua W. Miles, Collector of Internal Revenue of the United States for the District of Maryland, and Richard S. Dodson, Federal Prohibition Director for the State of Maryland, his successors or assigns; to which payment well and truly to be made, said principal binds himself, we bind ourselves, his

heirs, executors, and administrators and said Surety binds itself, its successors or assigns, jointly and severally by these presents.

Sealed with our seals, and dated this 9th day of July in the year of our Lord one thousand nine hundred and twenty-one.

Whereas, lately at the June Term 1921, of the District Court of the United States for the District of Maryland, in a suit pending in said Court between William H. Bryan, complainant and Joshua W. Miles, Collector of Internal Revenue of the United States for the District of Maryland, and Richard S. Dodson, Federal Prohibition Director for the State of Maryland, defendants, a decree was rendered against the said complainant and the said complainant having obtained an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said defendants citing and admonish-
22 ing them to be and appear in the Supreme Court of the United States, at the City of Washington, thirty days from and after the date of said Citation.

Now the condition of the above obligation is such, that if the said complainant (appellant) shall prosecute said appeal to effect, and answer all damages and costs if he fail to make good his said plea, then the above obligation to be void, else to remain in full force and virtue.

WILLIAM H. BRYAN. [SEAL.]
NEW AMSTERDAM CASUALITY COMPANY.
By GARNER W. DENMEAD,
Vice President.

Attest:

[Seal of New Amsterdam Casualty Co.]

G. LEE BURGESS,
Asst. Secretary.

Sealed and delivered in presence of

Witness:
JULIAN S. JONES.

Approved July 15, 1921.
JOHN C. ROSE,
U. S. District Judge.

23 UNITED STATES OF AMERICA, *ss:*

To Joshua W. Miles, Collector of Internal Revenue of the United States for the District of Maryland, and Richard S. Dodson, Federal Prohibition Director for the State of Maryland, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal from a decree of the District Court of the United States for the District of Maryland in your favor passed in a cause in said court wherein William H. Bryan is Complainant and Appellant and you are Defendants and Appellees, to show cause, if any there be, why the decree rendered

against the said Complainant and Appellant as in the said cause mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John C. Rose, Judge of the District Court of the United States for the District of Maryland, this fifteenth day of July, in the year of our Lord one thousand nine hundred and twenty one.

JOHN C. ROSE,
U. S. District Judge.

[Endorsed:] No. 233, Equity. William H. Bryan vs. Joshua W. Miles, etc. Citation. Retble. 13 Aug. 1921.

Service of the within citation acknowledged this 20th day of July, 1921.

ROBT. R. CARMAN,
Attorney for Defendants, United States Attorney.

24 *Stipulation of Counsel as to Making up Record on Appeal.*

Filed 20th July, 1921.

No. 233. Equity.

WILLIAM H. BRYAN, Complainant,

vs.

JOSHUA W. MILES, Collector of Internal Revenue of the United States for the District of Maryland, and Richard S. Dodson, Federal Prohibition Director for the State of Maryland, Defendants.

It is stipulated and agreed by and between counsel for the respective parties in the above entitled case that the transcript of record on Complainant's appeal to the Supreme Court of the United States shall consist of the following, viz:

1. Amended Bill of Complaint.
2. Application for permit etc., "Exhibit No. 1".
3. Refusal of Permit, "Exhibit No. 2".
4. Tender of Beverage Tax, "Exhibit No. 3".
5. Motion to Dismiss Bill.
6. Order of Court dismissing Bill of Complaint.
7. Petition for and Order allowing Appeal.
8. Assignment of Errors.
9. Appeal Bond.
10. Citation.
11. Stipulation of Counsel as to making up record on appeal.
12. Memorandum of the Clerk.
13. Order to transmit Record.
14. Clerk's Certificate.

JULIAN S. JONES,
Solicitor for Complainant.
ROBERT R. CARMAN,
Solicitor for Defendants.

25 *Memorandum of the Clerk.*

1. Petition for Appeal, filed 8th July, 1921.
2. Appeal granted 8th July, 1921.
3. Appeal Bond, Dated 9th July, 1921.
   Penalty: $300.00
   Obligor: New Amsterdam Casualty Company.
   Conditioned for costs.
4. Citation. Dated 15th July, 1921.

(Acknowledgment of service, dated 20th July, 1921.)

Order to Transmit Record.

And, thereupon, it is ordered by the Court here, that a transcript of the record and proceedings of the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States, and the same is transmitted accordingly.

Teste:

ARTHUR L. SPAMER,
Clerk.

26 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
District of Maryland, To wit:

I, Arthur L. Spamer, Clerk of the District Court of the United States for the District of Maryland, do hereby certify that the aforegoing is a true transcript of the record and proceedings of the said District Court, together with all things thereunto relating in the therein entitled cause, made up in accordance with stipulation of counsel for the respective parties filed in said cause.

In testimony whereof, I hereunto set my hand and affix the seal of said District Court, this 21st day of July, 1921.

[Seal of United States District Court, Maryland.]

ARTHUR L. SPAMER,
Clerk.

Endorsed on cover: File No. 28,383. Maryland D. C. U. S. Term No. 428. William H. Bryan, appellant, vs. Joshua W. Miles, collector of internal revenue of the United States for the district of Maryland, and Richard S. Dodson, federal prohibition director for the State of Maryland. Filed July 26, 1921. File No. 28,383.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 548.

WALTER A. EASTES, APPELLANT,

vs.

GEORGE F. CRUTCHLEY, COLLECTOR OF INTERNAL REVENUE FOR THE SIXTH DISTRICT OF MISSOURI, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED SEPTEMBER 22, 1921.

(28,503)

(28,503)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 548.

WALTER A. EASTES, APPELLANT,

vs.

GEORGE F. CRUTCHLEY, COLLECTOR OF INTERNAL REVENUE FOR THE SIXTH DISTRICT OF MISSOURI, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

INDEX.

	Original.	Print.
Citation with acknowledgment of service	6	1
Caption to transcript	1	1
Bill of complaint	2	2
Complainant's Exhibit No. 1—Application for permit	7	5
Refusal of Federal prohibition director to issue permit	9	7
Complainant's Exhibit No. 2—Tender of tax	10	8
Refusal of collector of internal revenue to accept tax	12	9
Motion to dismiss	14	9
Order sustaining motion to dismiss and allowing appeal	16	10
Petition for appeal	18	11
Assignment of errors	19	11
Bond on appeal	21	13
Praecipe for transcript	22	13
Clerk's certificate to transcript	23	14

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 23, 1921.

a UNITED STATES OF AMERICA, *sct:*

To George F. Crutchley, collector of internal revenue for the Sixth district of Missouri, and Shrader P. Howell, Federal prohibition director for the State of Missouri, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal filed in the Clerks' Office of the District Court of the United States for the Western Division of the Western District of Missouri, wherein Walter A. Eastes is appellant, and you are appellees, to show cause, if any there be, why the judgment rendered against the appellant as in said appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Arba S. Van Valkenburgh, Judge of the District Court of the United States for the Western Division of the Western District of Missuri, this 7th day of July in the year of our Lord one thousand nine hundred twenty-one.

ARBA S. VAN VALKENBURGH,
Judge.

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, sct:

I hereby acknowledge due service of the within Citation this 8th day of July, A. D. 1921.

CHAS. C. MADISON,
Attorney for Appellees.

[Endorsed:] No. 276. United States District Court, Western District of Missouri, Western Division. Walter A. Eastes vs. George F. Crutchley, collector of internal revenue for the Sixth district of Missouri, et al. Citation. Filed Jul. 7, 1921. Edwin R. Durham, clerk. H. C. Spaulding.

1 UNITED STATES OF AMERICA, *sct:*

Be it remembered that heretofore at the regular April Term of the District Court of the United States for the Western Division of the Western District of Missouri, and on the 13th day of May, 1921, a Bill of Complaint was filed in the office of the Clerk in the case wherein Walter A. Eastes is Complainant, and George F. Crutchley, Collector of the Internal Revenue of the United States for the Sixth District of Missouri, and Shrader P. Howell, Federal Prohibition Director for the State of Missouri, are defendants.

Said Bill of Complainant is in words and figures as follows:

2 In the District Court of the United States for the Western Division of the Western Judicial District of the State of Missouri.

No. —.

WALTER A. EASTES, Complainant,

vs.

GEORGE F. CRUTCHLEY, Collector of the Internal Revenue of the United States for the Sixth District of Missouri; Shrader P. Howell, Federal Prohibition Director for the State of Missouri, Defendants.

Bill in Equity.

To the Honorable A. S. Van Valkenburgh, judge of the United States District Court:

Walter A. Eastes, a citizen and resident of Kansas City, Missouri, brings this bill of complaint against George F. Crutchley, a citizen and resident of said city and state, who is the duly appointed, qualified and acting Collector of Internal Revenue of the United States for the Sixth Internal Revenue District of the State of Missouri, and Shrader P. Howell, a citizen and resident of Jackson County, in the State of Missouri, who is the duly appointed, qualified and acting Federal Prohibition Director of the State of Missouri, and the agent of William M. Williams, Commissioner of Internal Revenue for the United States, and respectfully shows unto this Honorable Court as follows:

That the defendant Crutchley, as such collector of the revenue, is charged by law with the duty of collecting and receiving taxes due the United States on distilled spirits in Government Bonded warehouses in said District, and upon the payment of the taxes due on said spirits by the owners thereof, to issue internal revenue stamps showing the payment of the taxes due the United States on
3 said spirits, and, upon permits duly issued by the defendant, Howell, to release said spirits to the owners thereof; that the Government Bonded warehouses in said District, and the distilled spirits on deposits therein, and keys to said warehouses, and the right of ingress and egress from and to the same are now in the custody and control of said defendant Crutchley; that under the Act of the Congress of the United States of October 28th, 1919, entitled the "National Prohibition Act", the defendant Howell is charged with the duty of issuing permits for the delivery, transportation and possession of distilled spirits to persons authorized by said Act to accept delivery of, transport and possess said spirits and, upon the issuance of said permits by said defendant, Howell to the owners of spirits on deposit in said Government Bonded warehouses, and presentation of the same to defendant Crutchley, on the payment to the United States of

the taxes due thereon, it is the duty of said Crutchley to release said spirits and deliver the same to said permit-ee;

That complainant is the owner of one barrel of distilled spirits hereinafter described, and became the owner thereof, and has owned the same ever since the month of August 1917; that said spirits are now on deposit in Government General Bonded Warehouse No. 2 of the United States, located at Wyandotte and Broadway Streets on Fourth Street in Kansas City, Missouri, and in the Sixth United States Internal Revenue District of said State; that said spirits are contained in a wooden barrel numbered 24221, containing approximately forty (40) taxable gallons, produced by the Blue Valley Distilling Company at Distillery No. 6, situated in Jackson County, in the State of Missouri, in the Sixth United States Internal Revenue District of said State; that there is now due the United States as taxes on the aforesaid spirits of complainant the sum of Two Hundred and Fifty-six Dollars ($256.00):

4 That the complainant has heretofore on the 4th day of May, 1921, presented to the defendant, Howell, a verified, written application setting forth the qualification of the applicant, and that he desires to obtain delivery, and possession of his said private property and to transport said spirits to his private dwelling in the City of Kansas City, which is occupied and used by him as his dwelling only, and to keep and use the same for lawful purposes therein; All of which will appear by an examination of the said verified written application herewith filed and marked, "Complainant's Exhibit No. 1"; that said defendant, Howell, wrongfully and without authority of law, refused to grant complainant the permit applied for, as aforesaid:

That the complainant has tendered to defendant Crutchley the full amount of the tax due the United States on said spirits, as aforesaid, and has demanded of the said defendant that he issue complainant United States Internal Revenue Stamps showing the payment of the aforesaid tax on said spirits, and that he release the said spirits, all of which will more fully appear by an examination of the written tender of the said tax and demand made upon the said Crutchley filed herewith and marked "Complainant's Exhibit No. 2"; that the defendant Crutchley, refused and still refuses to accept said tender or to release said spirits:

That the complainant desires to obtain the possession of said spirits as his private property, and to transport the same to his private dwelling, number 6007 Brookside in Kansas City, Missouri, which is occupied and used by complainant as his dwelling only, and to keep the same in said dwelling and use the same therein for lawful purposes only; that he does not desire the possession of said spirits for the purpose of barter or sale, or of disposing of the same or using same in violation of any law of the United States and he will not do so.

5 That in refusing to grant the permit for the delivery of said spirits and to accept the tender of taxes thereon and to issue Internal Revenue Stamps therefor as aforesaid, the defendants have claimed to act under the terms and authority of an Act of Congress

passed on or about October 28, 1919, commonly known as the Volstead Act. But your complainant is advised and accordingly avers that the said Volstead Act contains no provision which requires or authorizes the defendants to refuse said permit or to decline to receive payment of said taxes, as aforesaid, for the reason, among others, that said spirits were purchased by the complainant, as aforesaid, prior to the effective date of the said Volstead Act, and that he purchased said spirits, as aforesaid, solely for delivery to his said private dwelling and to be kept and used therein for lawful purposes only and as hereinbefore stated. And this complainant further avers that the removal of the said distilled spirits from the said U. S. Bonded Warehouse to his private dwelling for the purposes above specified, on the payment of the tax thereon, is not forbidden by the Eighteenth Amendment to the Constitution of the United States or the said Volstead Act. And this complainant is further advised and therefore alleges that if said Volstead Act is susceptible of a construction authorizing or justifying the action of the defendants in refusing to permit the removal of said spirits to his private dwelling for the purposes above specified on payment of the tax thereon, so much of said statute is unconstitutional, void and of no effect, for the reason that it transcends the power of Congress under the Eighteenth Amendment to the Constitution of the United States, deprives the plaintiff of his property without due process of law and without just compensation, and denies him the equal protection of the law, contrary to the Fifth Amendment to the Constitution of the United States.

6 Wherefore the complainant prays this Honorable Court

(1) For a decree ordering and directing the defendant, Shrader P. Howell, Federal Prohibition Director for the State of Missouri, to grant the permit applied for by the complainant as aforesaid;

(2) For a decree ordering and directing the said defendant, George F. Crutchley, Collector of Internal Revenue for the Sixth District of Missouri, to receive the aforesaid tender and to issue to the complainant Internal Revenue Stamps showing the payment of the said tax and to release and deliver the said distilled spirits to the complainant;

(3) That the complainant may have such other and further relief and such other and further orders and decrees as his case may require and as to the Court shall seem just and equitable.

May it please your Honor to grant unto this complainant a Writ of Subpœna directed to the defendant, George F. Crutchley, Collector of Internal Revenue for the Sixth District of Missouri, and the defendant, Shrader P. Howell, Federal Prohibition Director for the State of Missouri, commanding them and each of them to be and appear, either in person or by Solicitor, in this Honorable Court on or before a certain day therein to be named, and to answer this Bill of

Complaint and to show cause, if any they have, why a decree ought not to be passed as prayed.

And as in duty bound, etc.

(Signed) JOHN T. BARKER,
ELLIOTT W. MAJOR,
Attorneys for Complainant.

(Signed) WALTER A. EASTES,
Complainant.

7 (COMPLAINANT'S EXHIBIT No. 1.)

Application for Permit to Remove and Transport Distilled Spirits.

Kansas City, Missouri, May 3rd, 1921.

To Shrader P. Howell,
Federal Prohibition Director for the State of Missouri,
Kansas City, Missouri.

DEAR SIR:

I, the undersigned, Walter A. Eastes, hereby make application for a permit to remove the distilled spirits described below and now stored in the premises known as the Adams Transfer & Storage Company, general bonded warehouse No. 2, between Wyandotte and Broadway Streets on Fourth Street in Kansas City, Missouri, the said premises being used as a United States bonded warehouse for the purpose of receiving and storing distilled spirits, and now being in the custody and control of George F. Crutchley, Collector of Internal Revenue of the United States for the Sixth District of Missouri; and I further make application for a permit to transport from the said general bonded warehouse No. 2 the said distilled spirits described below to my private residence, same being known as 6007 Brookside Blvd., Kansas City, Missouri, and which said number is my private dwelling and is now used and occupied by me as a private dwelling only, such transportation to be completed on or before the 20th day of May, 1921. Said distilled spirits are described as follows:

Description of Distilled Spirits.

Kind of liquor.	No. and kind of packages.	Serial No. of packages, if any.	Quantity in wine gals.	Date when, how, and from whom procured.
(1)	(2)	(3)	(4)	(5)
Distilled Spirits, commercially known as "Blue Springs Sour Mash Whiskey."	Contained in wooden barrel.	24221.	Approx. 40.	Purchased by the undersigned, Walter A. Eastes, on Aug. 24, 1917, from S. Hirsch Dist. Co. Warehouse, Certificate No. B 405, representing and transferring the title to and ownership of the said distilled spirits.

8 I further state and swear that the above statements are true and further that I purchased the said warehouse certificate on the 24th day of August, 1917, and that I have been ever since that date and am now the sole and legal owner of said certificate and said distilled spirits above described and that the same were legally acquired by me and will be legally kept and used by me in my said private dwelling only. I further state that I desire said permit for the sole purpose of removing and transporting said distilled spirits from said Government Bonded Warehouse to my said private dwelling, No. 6007 Brookside in the City of Kansas City, State of Missouri and which is now occupied and used by me as my private dwelling only and in which said private dwelling I desire to keep and will keep the said distilled spirits and use the same therein for lawful purposes only. I further state that I do not desire the possession of said distilled spirits for the purpose of barter and sale or disposing of same or using the same in violation of any law of the United States and I will not so do. I further state and swear that before removing and transporting the said distilled spirits I intend to and will fully comply with all the laws of the United States and pay and tender to the Collector of Internal Revenue of the United States for this District the full and proper tax thereon.

(Signed) WALTER A. EASTES.

STATE OF MISSOURI,
County of Jackson, ss:

Walter A. Estes, being first duly sworn upon his oath, says that the above matters and facts stated in this verified written application for a permit to remove and transport distilled spirits are true and correct. This 3rd day of May, 1921.

(Signed) WALTER A. ESTES.

Subscribed and sworn to before me a Notary Public within and for the City of Kansas City, County of Jackson, State of Missouri, this 3rd day of May 1921.

My commission as Notary Public expires on the 11th day of Dec. 1924.

[SEAL.] (Signed) A. VYOLA FITZGERALD,
Notary Public.

9 I hereby refuse to issue the permit to transport distilled spirits applied for in the above written verified application and refuse to comply with the requests therein made. This 4th day of May 1921.

(Signed) SHRADER P. HOWELL,
Federal Prohibition Director for the State of Missouri,
By JOE W. McQUEEN,
Chief Clerk & Inspector.

10 (COMPLAINANT'S EXHIBIT NO. 2.)

Tender of Tax.

Kansas City, Missouri, May 3rd, 1921.

To George F. Crutchley,
Collector of Internal Revenue for the Sixth District of Missouri,
Kansas City, Missouri.

DEAR SIR:

I, Walter A. Eastes, the undersigned, hereby tender to you the sum of Two Hundred Fifty-Six ($256.00) Dollars for the purpose of paying the United States tax on one barrel of distilled spirits, the said barrel containing approximately forty proof gallons, commercially known as "Blue Springs Sour Mash Whiskey", being Serial No. 24221 and stored in the Adams Transfer & Storage Company General Bonded Warehouse No. 2 between Wyandotte and Broadway Streets on Fourth Street in Kansas City, Missouri, the said premises being used as a United States Bonded Warehouse for the purpose of storing distilled spirits and now being in your custody and control as the Collector of Internal Revenue of the United States for the Sixth District of Missouri. The said distilled spirits were purchased by me on August 24th 1917, from S. Hirsch Distilling Company, for the purpose of being transported from said Government Bonded Warehouse to my private dwelling, No. 6007 Brookside in the City of Kansas City, State of Missouri, and which is now occupied and used by me as my private dwelling only and in which said private dwelling I desire to keep the said distilled spirits and use the same therein for lawful purposes only. That I do not desire the possession of said distilled spirits for the purpose of barter or sale or of disposing of same or using the same in violation of any law of the United States and I will not so do; and I further state I am the sole owner of the said distilled spirits above described and the same were legally acquired by me and will be legally kept and used by me in my said private dwelling only.

11 I now desire to pay the tax on the said distilled spirits and hereby and herewith hand and tender to you $256.00, being the approximate tax at the rate of $6.40 per gallon, and I hereby request you to issue to me United States Revenue Stamps showing the payment of the aforesaid tax on said distilled spirits and desire to have you order the said spirits to be gauged and released from the said Adams Transfer & Storage Company General Bonded Warehouse No. 2 between Wyandotte and Broadway Streets on Fourth Street in aKnsas City, Missouri, and upon the release of the same, I intend to transport the said distilled spirits to my said private dwelling, situated as above stated and described and to be kept and used in my said private dwelling for the purposes only hereinabove stated, and I hereby exhibit to you the original certifi-

cate of the S. Hirsch Distilling Company, showing the Serial Number of the said barrel of distilled spirits to be 24221.

Respectfully yours,
(Signed) WALTER A. EASTES.

STATE OF MISSOURI,
County of Jackson, ss:

Walter A. Eastes being first sworn upon his oath says that the matters and facts stated in the above tender of Tax and in the above application are true and correct according to his best knowledge and belief.

(Signed) WALTER A. EASTES.

Subscribed and sworn to before me a Notary Public within and for the County of Jackson this 3rd day of May 1921.
My commission expires on the 11th day of Dec. 1924.
[SEAL.] (Signed) A. VYOLA FITZGERALD,
Notary Public.

12 I refuse to accept the tender of tax made on distilled spirits as above set out and I refuse to issue the United States Revenue Stamps in payment of the said tax on said distilled spirits and I refuse to order the said distilled spirits gauged and I refuse to release said distilled spirits from the Government Bonded Warehouse or to comply in any manner with the requests contained in the above tender and application, because Prohibition Director refused to issue permit May 4, 1921.

(Signed) GEORGE F. CRUTCHLEY,
Collector of Internal Revenue of the United States for the Sixth District of Missouri.

13 And afterwards, to-wit, on the 7th day of July, 1921, a Motion to dismiss was filed.
Said Motion to Dismiss is in words and figures as follows.

14 In the District Court of the United States for the Western Division of the Western Judicial District of the State of Missouri.

WALTER A. EASTES, Complainant,

vs.

GEORGE F. CRUTCHLEY, Collector of Internal Revenue for the Sixth District of Missouri, and Shrader P. Howell, Federal Prohibition Director for the State of Missouri.

Motion to Dismiss Bill.

Now come the defendants herein, and move to dismiss the bill of complaint herein for the reason that said bill fails to allege any mat-

ter of equity entitling the complainant to the relief prayed for therein, or to any relief.

GEORGE F. CRUTCHLEY,
SHRADER P. HOWELL,
Defendants.

(Signed) By CHAS. C. MADISON,
United States Attorney.

15 And afterwards, to-wit, on the 7th day of July, 1921, an Order sustaining the Motion to Dismiss was filed and entered of record.

Said Order is in words and figures as follows:

16 In the District Court of the United States for the Western Division of the Western Judicial District of the State of Missouri.

WALTER A. EASTES, Complainant,

vs.

GEORGE F. CRUTCHLEY, Collector of Internal Revenue for the Sixth District of Missouri, and Shrader P. Howell, Federal Prohibition Director for the State of Missouri, Defendants.

Order Sustaining Motion to Dismiss and Granting Appeal.

Now on this 7th day of July, 1921, comes the plaintiff in person and by his attorney, John T. Barker, and the defendants, represented by their attorneys Hon. C. C. Madison, District Attorney, and Hon. W. H. Hallett, Assistant District Attorney, and it appearing to the court after listening to arguments by both sides that the motion to dismiss plaintiff's bill should be sustained; it is hereby ordered adjudged and decreed that the defendants' motion to dismiss plaintiff's bill for lack of equity be sustained and that judgment be entered for the defendants and that plaintiff be allowed an exception and be granted an appeal to the Supreme Court of the United States, which appeal is asked for in open court upon the filing of a bond in the sum of Two Hundred and Fifty Dollars ($250.00), which is herewith filed and approved by the court.

(Signed) ARBAS S. VAN VALKENBURGH,
Judge.

17 And afterwards, to-wit, on the 7th day of July, 1921, Petition for Appeal, together with the allowance thereof, Assignment of Errors, Bond on Appeal and Præcipe for Transcript were filed.

Said Petition for Appeal, together with the allowance thereof, Assignment of Errors, Bond on Appeal and Præcipe for Transcript are in words and figures as follows:

18 In the District Court of the United States for the Western Division of the Western Judicial District of the State of Missouri.

No. —.

WALTER A. EASTES, Complainant,

vs.

GEORGE F. CRUTCHLEY, Collector of the Internal Revenue of the United States for the Sixth District of Missouri; Shrader P. Howell, Federal Prohibition Director for the State of Missouri, Defendants.

Petition for Appeal.

To the Honorable A. S. Van Valkenburgh, judge of the United States District Court:

The above named plaintiff, Walter A. Eastes, believing himself aggrieved by the decree made and entered in this cause on the 7th day of July 1921, dismissing plaintiff's bill of complaint, does hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors which is filed herewith, and plaintiff prays that his appeal may be allowed, and that citation issue as provided by law, and that a transcript of the record, upon which said decree was based, duly authenticated, may be sent to the United States Supreme Court.

(Signed) JOHN T. BARKER AND
ELLIOTT W. MAJOR,
Solicitors for Plaintiff.

Kansas City, Mo., July —, 1921.

Notice of appeal received.
Issuance of citation waived.
(Signed) CHAS. C. MADISON,
Solicitor for Defts.

Allowed July 7, 1921.
(Signed) ARBA S. VAN VALKENBURGH,
Judge.

19 In the District Court of the United States for the Western Division of the Western Judicial District of the State of Missouri.

No. —.

WALTER A. EASTES, Complainant,

vs.

GEORGE F. CRUTCHLEY, Collector of the Internal Revenue of the United States for the Sixth District of Missouri: Shrader P. Howell, Federal Prohibition Director for the State of Missouri, Defendants.

Assignment of Errors.

Now comes the plaintiff in the above entitled cause and respectfully complains that the decree entered in said cause on the 7 day of July 1921, is erroneous and prejudicial to plaintiff in the following particulars:

I.

The court erred in sustaining the defendant's motion to dismiss said bill and in entering a decree in dismissing said bill.

II.

Said decree deprives the plaintiff of the protection of the Fifth Amendment to the Constitution of the United States, in that it sanctions the taking of plaintiff's private property without due process of law, and the taking of plaintiff's private property for a public use without any compensation.

III.

Said decree is neither supported nor sustained by the Eighteenth Amendment to the Constitution of the United States.

20 IV.

In rendering said decree, the Court erroneously held the Fifth and the Eighteenth Amendments to be in conflict.

V.

Under the allegations of plaintiff's bill he is entitled to a decree against the defendant Howell compelling and directing said defendant to grant the permit applied for in said complaint and to compel defendant Crutchley to receive the tender of tax offered him and to release to plaintiff the spirits described in said bill.

VI.

The court erred in dismissing the bill for want of equity.

Wherefore, plaintiff prays that said decree be reversed; that the Supreme Court cause the proper decree to be entered directing the defendant Howell to grant the permit applied for and directing defendant Crutchley to release to the plaintiff the spirits described in plaintiff's bill, and for such other and further relief as the plaintiff may be entitled to receive.

(Signed) JOHN T. BARKER,
ELLIOTT W. MAJOR,
Solicitors for Plaintiff.

21 In the District Court of the United States for the Western Division of the Western Judicial District of the State of Missouri.

No. —.

WALTER A. EASTES, Complainant,

vs.

GEORGE F. CRUTCHLEY, Collector of the Internal Revenue of the United States for the Sixth District of Missouri; Shrader P. Howell, Federal Prohibition Director for the State of Missouri, Defendants.

Bond on Appeal.

Know all men by these presents: That we, Walter A. Eastes as principal, and John T. Barker as sure*ties* acknowledge ourselves to be jointly indebted to the United States, appellee in the above cause in the sum of $250.00 *dollars* conditioned that, whereas, on the 7 day of July, A. D. 1921, in the District Court of the United States for the Western Division of the Western District of Missouri in a suit pending in that Court, wherein Walter A. Eastes was plaintiff and George F. Crutchley, Collector of the Internal Revenue of the United States for the Sixth District of Missouri, and Shrader P. Howell, Federal Prohibition Director for the State of Missouri, were defendants, numbered on the docket as —, a decree was rendered against the said Walter A. Eastes and the said Walter A. Eastes having obtained an appeal to the Supreme Court of the United States and filed a copy thereof in the office of the clerk of the court to reverse the said decree.

Now, if the said Walter A. Eastes shall prosecute his appeal to effect and answer all costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) WALTER A. EASTES,
Principal.
JOHN T. BARKER,
Surities.

Approved July 7, 1921.
(Signed) ARBA S. VAN VALKENBURGH,
Judge of the District Court for the Western District of Missouri.

22 In the District Court of the United States for the Western Division of the Western Judicial District of the State of Missouri.

No. —.

WALTER A. EASTES, Complainant,

vs.

GEORGE F. CRUTCHLEY, Collector of the Internal Revenue of the United States for the Sixth District of Missouri; Shrader P. Howell, Federal Prohibition Director for the State of Missouri, Defendants.

Præcipe for Transcript.

To the clerk:

You will please prepare and duly authenticate a typewritten transcript of the record in the above entitled cause for an appeal to the Supreme Court of the United States, excluding the formal and immaterial parts of the pleadings, documents and other papers, in accordance with Equity Rule 76, to-wit:

First. The Bill of complaint and the order filing same.

Second. Motion of defendant to dismiss and entry showing the filing of the same.

Third. Record showing submission of motion to dismiss for the decision of the Court.

Fourth. Final Decree.

Fifth. Petition for allowance of appeal.

Sixth. Assignment of errors.

Seventh. Order allowing appeal.

Eighth. Citation issued on the appeal showing acknowledgement of service thereon.

Ninth. Copy of Appeal Bond.

Tenth. This præcipe.

(Signed) JOHN T. PARKER,
ELLIOTT W. MAJOR,
Solicitors for Plaintiff.

23 UNITED STATES OF AMERICA, *sct:*

I, Edwin R. Durham, Clerk of the District Court of the United States for the Western Division of the Western District of Missouri, do hereby certify that the foregoing is a full, true and complete transcript of the record, assignment of errors, and all proceedings in the case wherein Walter A. Eastes is complainant and George F. Crutchley, Collector of Internal Revenue of the United States for the Sixth District of Missouri, and Shrader P. Howell, Federal Prohibition Director for the State of Missouri, are defendants, as fully as the same appears on file and of record in my office.

I further certify that the original citation is prefixed hereto and returned herewith.

Witness my hand as Clerk and the seal of said Court. Done at office in Kansas City, Missouri, this 21st day of July, A. D. 1921.

[Seal of the United States District Court of Missouri, Western Division, Western District.]

EDWIN R. DURHAM,
Clerk U. S. District Court.

Endorsed on cover: File No. 28,503. W. Missouri D. C. U. S. Term No. 548. Walter A. Eastes, appellant, vs. George F. Crutchley, collector of internal revenue for the Sixth district of Missouri, et al. Filed September 23d, 1924. File No. 28,503.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

No. 174.

CHARLES CORNELI, *Appellant*,

v.

GEORGE H. MOORE, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF MISSOURI, *Respondent*.

No. 175.

GEORGE J. GHIO, *Appellant*,

v.

GEORGE H. MOORE, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF MISSOURI, *Respondent*.

No. 428.

WILLIAM H. BRYAN, *Appellant*,

v.

JOSHUA W. MILES, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MARYLAND, AND RICHARD S. DODSON, FEDERAL PROHIBITION DIRECTOR FOR THE DISTRICT OF MARYLAND, *Respondents*.

BRIEF AMICUS CURIAE.

IN SUPPORT OF MOTIONS TO DISMISS THE BILLS OF COMPLAINT.

Agreeable to the permission of the Court this brief is filed as *Amicus Curiae* in the hope that some of the authorities and reasons given may prove helpful in determining the proper construction to be placed upon The National Prohibition Act.

STATEMENT.

This brief is submitted to sustain the following proposition of law which is believed to be determinative of the case:

There is no authority in the National Prohibition Act for a person to withdraw liquor from a Government bonded warehouse and transport it to his private residence for his personal use since the enactment of the National Prohibition Act. If this contention is correct it makes no difference whether he owned the warehouse receipt before the law went into effect or bought it afterwards. The provisions of the National Prohibition Act relating to this case are as follows:

> Section 3. No person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented. Liquor for non-beverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and the commissioner may, upon application, issue permits therefor: *Provided,* That nothing in this Act shall prohibit the purchase and sale of warehouse receipts covering distilled spirits on deposit in Government bonded warehouses, and no special tax liability shall attach to the business of purchasing and selling such warehouse receipts.
>
> Section 33. After February 1, 1920, the possession of liquors by any person not legally permitted

under this title to possess liquor shall be *prima facie* evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this title. Every person legally permitted under this title to have liquor shall report to the commissioner within ten days after the date when the eighteenth amendment of the Constitution of the United States goes into effect, the kind and amount of intoxicating liquors in his possession. But it shall not be unlawful to possess liquors in one's private dwelling while the same is occupied and used by him as his dwelling only and such liquor need not be reported. * * *

Section 37. Nothing herein shall prevent the storage in United States bonded warehouses of all liquor manufactured prior to the taking effect of this Act, or prevent the transportation of such liquor to such warehouses or to any wholesale druggist for sale to such druggist for purposes not prohibited when the tax is paid, and permits may be issued therefor.

ALL POSSESSION OF LIQUOR UNLAWFUL EXCEPT AS AUTHORIZED IN THE NATIONAL PROHIBITION ACT.

It is clear from the above sections of the statute that no one is permitted to transport or possess intoxicating liquor except as authorized in the National Prohibition Act. Section 33 provides that every person legally permitted to have liquor shall report to the commissioner within ten days after the date when the eighteenth amendment to the Constitution goes into effect. There is nothing in the bill of complaint to show that the complainant, Corneli, reported such liquor to the commissioner or complied with any of the provisions of this section, even if he was entitled to have the liquor

kept in the bonded warehouse for his personal use until it was transported to his residence.

Section 37 fixes the status of liquor manufactured prior to prohibition and stored in the Government bonded warehouses. The permissible use of such liquor is provided for. Liquors in the bonded warehouse may be transported to such warehouse or to any wholesale druggist for sale to such druggist for purposes not prohibited when the tax is paid. No provision is made in this section for withdrawing liquor from a Government bonded warehouse and transporting it to a private residence for beverage purposes.

The purpose of the National Prohibition Act is clear in that it prohibits the manufacture, sale, transportation, importation, exportation, delivery, furnishing or possession of any intoxicating liquor except as authorized in the Act. There is not one provision in the National Prohibition Act which authorizes the withdrawal of liquor from a Government bonded warehouse to be transported to a private residence for beverage purposes. If that had been permitted, every person in the United States who wanted liquor for beverage purposes would at once have made arrangements with some distiller or owner of a warehouse receipt to transfer title to this liquor before the law went into effect, and the 40,000,000 gallons in the bonded warehouses which was supposed to be used for non-beverage purposes would have been consumed or disposed of for purposes prohibited by the Act.

When National prohibition went into effect the policy the Government adopted was to prohibit the beverage traffic and the possession of intoxicating liquor for beverage purposes with one exception. Congress pro-

vided that liquor purchased and possessed by the owner for his own use in his own private residence and for bona fide guests should not be prohibited. This manifest purpose in the law is clearly inconsistent with the idea that all of the liquor on hand in the Government warehouses could be transferred to individuals for beverage purposes and transported at any time thereafter. Such a construction is not only inconsistent with the plain wording of the law but would manifestly make it difficult if not impossible for the officers to enforce the Prohibition Act with such an exception in it.

IN ALL OF THE PROHIBITION LAWS OF THE STATES WHICH PROHIBIT THE MANUFACTURE, SALE, TRANSPORTATION, ETC., OF INTOXICATING LIQUOR EXCEPT AS AUTHORIZED BY THE LAW, THOSE WHO CLAIM THE RIGHT TO MAKE OR POSSESS SUCH LIQUOR MUST SET FORTH THE PROVISIONS IN THE LAW WHICH AUTHORIZED THEM TO HAVE CONTROL OF THE LIQUOR. THIS IS THE FORM OF THE PROHIBITION IN SECTION 3 OF THE NATIONAL PROHIBITION ACT. These laws do not confine the prohibition to beverage liquor traffic, but prohibits intoxicating liquors for all purposes except as authorized in the Act. Those who desire to make, sell, transport or possess liquor under a general prohibition of such Acts must do so under some specific exception named in the law. In the recent case of Crane v. Campbell, 245 U. S., 304, the Supreme Court sustained the decision of the state court which held:

> "The only means provided by the Act for procuring intoxicating liquors in the prohibition dis-

> trict for any purpose relates to wine to be used for sacramental purposes and pure alcohol to be used for scientific or mechanical purposes, or for compounding or preparing medicines, so that the possession of whiskey, or of any intoxicating liquor, other than wine and pure alcohol for the uses above mentioned is prohibited."

Section 15 of the state law provides:

> "It shall be unlawful for any person to import, ship, sell, transport, deliver, receive or have in his possession any intoxicating liquors except as in this Act provided."

The full text of the statute of Idaho setting forth the exceptions will be found in the decision of the State Supreme Court *ex parte* Crane, 151 Pac. Rep., 1006.

That this is the rule adopted in the construction of prohibitory laws is well established. The Superior Court of Utah in construing an act of the legislature of that state (Laws 1917, C 2) State v. Certain Intoxicating Liquors, 172 P. 1050, prohibiting all sale, manufacture, use and possession of intoxicating liquor except as authorized, in answer to the contention that the statute did not prohibit the possession of liquor acquired prior to the date upon which the act became effective and intended for the personal use of the owner said:

> "(1) No exceptions being made in the act other than the foregoing, we think it is made clear by the sections quoted that it was the legislative intent to not only forbid the possession but to abolish property rights in alcoholic liquors within the confines of the state after August 1, 1917, *aside from the exceptions expressly provided for in the Act*, no matter when or how acquired, for what use intended, or in what place kept or possessed. * * *

> "The tendency of the more recent legislation of the several states with respect to alcoholic liquors is directly against the consumption. It is in the consumption always that the evil lies. A reading of the Utah statute convinces that primarily it was the purpose and intent of the Legislature to prevent the use of liquors within the confines of the state as a beverage, whether in private or moderation. The act itself provides that it shall be deemed an exercise of the police powers for the protection of society, and that all of its provisions shall be liberally construed for the attainment of that purpose. The law in itself does not distinguish as to persons, time, place or purpose for which liquors may be held or possessed except as in the act expressly mentioned and reserved. Officers and the courts are made chargeable with its observance and enforcement. Upon these its efficacy depends." (Italics ours)

The Supreme Court of the State of Washington in State v. Giaudrone, 186 P. 870, construing the prohibition laws of that state held:

> "Laws 1917 p. 60, §17h, prohibits entirely the use of intoxicating liquors as a beverage, or the possession thereof for *any purpose except those specified*, and prohibits the possession of liquor obtained prior to its passage, notwithstanding section 23 and other sections relating to the giving of liquor to guests in private dwellings, etc." (Italics ours.)

The Supreme Court of Nebraska in the case of Fitch v. State, 167 N. W., at pp. 418 and 419 said in construing the prohibition laws of that state, Chap. 187 of Laws of 1917:

> "But there is no provision anywhere in the act authorizing the sale of whiskey to any person under any condition, or authorizing its possession by any person *except only as it is permitted to be kept in a private dwelling house.*" (Italics ours.)

These cases all hold that where there is a general prohibition in a statute with certain named exceptions that the burden is upon him who seeks exemption from the operation of the law to clearly show the act to be within the terms of such exceptions.

THE GENERAL RULE OF STATUTORY CONSTRUCTION IS THAT A PROVISO CARVES SPECIAL EXCEPTIONS ONLY OUT OF A GENERAL ENACTING CLAUSE; AND THAT THOSE WHO SET UP ANY SUCH EXCEPTION MUST ESTABLISH IT AS BEING WITHIN THE WORDS AS WELL AS THE REASON THEREOF.

United States v. Dickson, 15 Pet. 141, 165, 10 L. Ed., 689,
Ryan v. Carter, 93 U. S., 78, 83, 23 L. Ed., 807,
Schlemmer v. Buffalo Railway, 205 U. S., 1, 10, 27 Su. Ct., 407, 51 L. Ed., 681,
United States v. Trinity Railway (5th Circ.), 211 Fed., 448, 453, 128 C. C. A., 120.

Section 3 of the National Prohibition Act provides as follows:

> "Sec. 3. No person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.

"Liquor for non-beverage purposes and wine for sacramental purposes may be manufacteured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and the commissioner may, upon application, issue permits therefor; *Provided*, that nothing in this Act shall prohibit the purchase and sale of warehouse receipts covering distilled spirits on deposit in Government bonded warehouses, and no special tax liability shall attach to the business of purchasing and selling such warehouse receipts."

There is no provision in the National Prohibition Act which authorizes the withdrawal of intoxicating liquor for beverage purposes from the bonded warehouse. Congress recognized and provided in express terms for the disposition of liquors manufactured prior to the date upon which the Act became effective, stored in bonded warehouses. This provision is made in Section 37 quoted above. Because of the practice which had grown up in the liquor trade of transferring title to liquors stored in Government bonded warehouses by means of warehouse receipts, and in order to facilitate the transfer of such liquors to the permitted non-beverage uses, the proviso was inserted in Section 3 relative to warehouse receipts. Coming as it does right after the exception made as to non-beverage liquors along with its provision stating that no tax liability shall attach to the business of purchasing and selling such warehouse receipts, this intent upon the part of Congress is clearly manifest. The transportation and possession for non-beverage and sacramental use is provided for in Section 3 of Title II as follows:

> "Liquor for non-beverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and the commissioner may, upon application, issue permits therefor."

Other exceptions are contained in Sections 4, 6 and 33 of Title II and Title III.

Congress having made provision for the permitted uses of liquor and having in express terms in the language of Section 37 provided for the disposition of liquors in bonded warehouses by all principles of statutory construction no exception should be implied. If the statute had been silent upon the question of the disposition of liquor in bonded warehouses the case of the complainants would be stronger and the court might infer an intention that their transportation from the bonded warehouses to the private dwelling of the owner for personal use was not prohibited. But in the face of the positive provision of the Act no such exception can be implied.

One of the principle problems which confronted Congress in making effective the prohibition of the eighteenth amendment was the necessity for insuring that the enormous stocks of liquors stored in Government bonded warehouses should be distributed and used for strictly non-beverage purposes. That was carefully safeguarded and it was provided that it should be transported only to wholesale druggists for sale to such druggists for purposes not prohibited when the tax was paid, or that it might be transported to such Government bonded warehouses, is clearly indicative of an intent to prevent its withdrawal from bond for beverage purposes. A complete system of control over the trans-

portation of liquors by the means of permits is provided in the various sections of the Act (Sections 6, 7, 10, 11 and 37). All transportation must be upon a permit issued by the commissioner or his agent except in the case of liquor prescribed by a physician. In Section 37 which treats of the transportation from bonded warehouses it is provided that permits may issue for the purposes authorized in the section. There is no provision for the issuance of a permit to transport from a Government bonded warehouse to a private dwelling for personal use.

Congress having expressly named the places to which liquors stored in bonded warehouses could be transported under the principle of *expressio unius exclusio alterius* no exception should be implied.

THE PURPOSE OF THE NATIONAL PROHIBITION ACT.

The purpose of the National Prohibition Act is clearly set forth in the provision which says:

> "All the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquors as a beverage may be prevented."

It is true that an exception was inserted in the Act to the effect that intoxicating liquor purchased and possessed before the law went into effect might be kept in the private dwelling as defined in the Act and such liquor need not be reported as required for all other liquors legally possessed. See Section 33. The chief reason why this provision was inserted in the bill was because this Court had left some doubt as to the power of Congress to prohibit possession of liquor which had

been legally purchased before the law went into operation. See Barbour v. Georgia, 249 U. S., 454, 63 L. Ed., 705, decided April 14, 1919, before this law was enacted. In that case this Court said:

> "The defendant raised, in his amended motion for a new trial, the further objection that the law was unconstitutional as applied to him, because the liquor had been acquired before the statute was enacted; but the trial judge denied the motion and declined to approve any of the grounds on which it was based. In accordance with the state practice its Supreme Court therefore refused to consider the point. Dickens v. State, 137 Ga., 523; Harris v. State, 120 Ga., 196, 197. Consequently the question is not before us, Louisville & Nashville Railroad Company v. Woodford, 234 U. S., 46, 51; and on it we express no opinion."

The later case of Rhode Island v. Palmer, 253 U. S. 387, 64 L. Ed., 946, construing the National Prohibition Act settled this question so there can be no doubt about the authority of Congress to prohibit entirely the possession of liquor for beverage purposes either within or without a private dwelling regardless of whether it was purchased before or after the law went into effect. This Court said:

> "The power of Congress to enforce the Prohibition Amendment to the Federal Constitution may be exerted against the disposal for beverage purposes of liquors manufactured before the Amendment became effective, just as it may be against subsequent manufacture for those purposes."

The Congress, however, did clearly intend to prohibit persons from securing or possessing liquor for

beverage purposes except that which was actually in their possession before the law went into effect, and the liquors legally possessed must be reported as required by Section 33, except those that were actually in the private dwelling. This purpose is in direct harmony with the purpose of prohibition laws generally.

The Supreme Court of Alabama in the case of Southern Express Company v. Whittle, 194 Ala., 406, said:

> "THE OBJECT AND PURPOSE OF ALL LAWS GOVERNING THE SUBJECT OF INTOXICATING LIQUORS IS 'TO PROMOTE TEMPERANCE.' THE EVIL TO BE REMEDIED IS THE USE OF INTOXICATING LIQUORS AS A BEVERAGE."

Expressions of this kind might be multiplied showing that the courts in construing the purpose of prohibition statutes recognize that their purpose is to prevent the consumption of liquor as a beverage.

Ex parte Crane, 151 P. 1006,
Lincoln v. State, 27 Vt., 320 at 337,
State v. J. P. Bass Publishing Co., 104 Me. 288, 71 A. 894,
Marks v. State, 159 Ala., 71 at page 84,
State v. Phillips, 109 Miss., 22, 69 So. 652,
State v. Certain Intoxicating Liquors (Utah), 172 P. 1050,
State v. Giaudrone (Wash.), 186 P. 870,
Fitch v. State (Neb.), 167 N. W., 417, 419,
West Virginia v. Adams Express Co. (C. C. A., 4th Cir. Ct.), 219 F. 794,
Frageser v. Gray, 73 Md., 250,
Crowley v. Christensen, 137 U. S., 87, 34 L. Ed., 620,
Crane v. Campbell, 245 U. S., 304, 62 L. Ed., 304.

The ultimate purpose of the eighteenth amendment was to prevent the consumption of intoxicating liquor as a beverage through the prohibition upon the various means by which it comes into existence and is acquired. The National Prohibition Act was enacted by Congres to effectuate the purpose of the amendment.

It is manifest, that in the absence of a specific provision in the statute authorizing it, that a construction placed upon the National Prohibition Act which would allow the 40,000,000 gallons of whiskey to be distributed direct from the bonded warehouses to the private dwellings of the United States on the ground that this liquor was possessed by the owners of these private dwellings before the law went into effect for the specific purpose of personal use, even though that purpose had not been set forth in the report of such liquors to the commissioner as required in Section 33 of the statute, is clearly in contravention with the plain purpose of this Act.

THE STATUS OF LIQUORS STORED IN A BONDED WAREHOUSE AS COMPARED WITH THE STATUS OF LIQUORS STORED IN A PRIVATE WAREHOUSE UNDER THE NATIONAL PROHIBITION ACT.—THE STREET CASE AND WHAT IT DECIDED.

The Street case is clearly distinguishable from the case at bar. In that case Street had bought his liquor prior to the enactment of prohibition and had it in a private storage warehouse for his own use. The only question to be decided was whether he could possess it outside of his home when he fulfilled all the other conditions of the law. The court held that it was in his possession and that he could transport it. The instant

cases present an entirely different set of facts. There is no provision of law which authorizes the withdrawal of liquor from a bonded warehouse for personal use, in fact, the provision relating to the bonded warehouse specifically states the places to which the liquor can be transported and the persons who can receive it. There is no provision there for taking it from the bonded warehouse to the home of the owner for personal use.

The decision in the Street case nowhere refers to Government bonded warehouses, the War Prohibition Act or Section 37 of the National Prohibition Act. The conclusion reached by the court was based upon exclusive possession, control and access to the liquor, or in other words, upon the nature of the possession. This is shown by the following language from the opinion of the court in that case:

> "By the admissions the appellant is lessee of the room in which the liquors are stored and he '*is in exclusive possession and control* of them.' Thereby the relation of the warehouse company to the liquors is restricted to the public function of furnishing such police, fire, and other protection to its buildings and their contents as the law or its lease require on the part of such company and to allowing the plaintiff to have access to his property in order that he may remove it for an admittedly lawful purpose. The company could not sell, give away or otherwise transfer the liquors to anyone other than in this limited way to the plaintiff owner." (Italics ours)

This decision in no way affects the removal or transportation of liquors stored in Government bonded warehouses. No one will claim that liquors in Government bonded warehouses are in the exclusive posses-

sion and control of the owner of the warehouse receipt. He cannot have access to them, his right to secure them is conditioned upon his fulfilling certain conditions with reference to the warehouse receipt as well as all of the conditions named in the prohibition statutes.

The right of the owner of the warehouse receipt to liquors is not paramount but is subordinate to the interest of the Government in them for the collection of the tax. This right of the Government attaches to such liquors from the inception of the process of manufacture and follows it through the various stages until the time the tax is paid and not until that moment can the individual citizen be said to be in exclusive possession of such liquors. That the right of the Government is superior in such cases is evidenced by the various provisions of the revenue laws as well as by decisions of the court construing them. As Judge McPherson said *In Re* Miller Pure Rye Distilling Company, 176 F. 606 at p. 609:

> "A distiller is required to provide at his own expense a warehouse in which nothing but spirits may be stored. The warehouse must have no doors or windows leading into the distillery or into any other room or building, and must be under the direction and control of the collector of the district, and in immediate charge of a storekeeper who is assigned to this duty by the Commissioner of Internal Revenue. In this warehouse the spirits may remain for eight years, but they may be withdrawn at any time during that period. 2 U. S. Comp. St., 1901, p. 2122. If the commissioner thinks the warehouse unsafe or unfit for use, he may require the distiller to provide another and to remove the spirits at his own expense. Id. 2123. THE WAREHOUSE IS

THEORETICALLY IN THE JOINT CUSTODY OF THE STOREKEEPER AND THE PROPRIETOR, BUT IN FACT THE CONTROL OF THE STOREKEEPER IS COMPLETE AND PRACTICALLY EXCLUSIVE. The lock is put on by the Government, and the key is in the storekeeper's possession. The warehouse must not be unlocked or opened or remain open except in the presence of the storekeeper or his lawfully designated representative, and no articles may be received or taken out except by the collector's order addressed to the storekeeper. Id. 2124. Any revenue officer at any hour of the day or night may enter the building to examine, gauge, measure, and take account of the spirits. Heavy penalties are denounced if his attempt to enter is obstructed by the distiller. Id. 2125. Immediately upon distillation, the spirits must be placed in the warehouse. Careful regulations provide what kind of packages may be used, and regulate their brands and stamps. Id. 2130, 2132. A formal entry that the spirits have been deposited in the warehouse must be made with the collector, the storekeeper and the commissioner, and a bond for the payment of the tax must accompany the entry. Id. 2133. Immediately after the tax has been paid, the spirits must be removed under penalty of forfeiture. Id. 2132. This removal is carefully guarded, and can only take place on the collector's order. Id. 2135, 2136. There are heavy penalites for removing spirits from the warehouse except as provided by law, and these penalities may be inflicted although no intent to defraud may exist. Id. 2136." (Capitals ours.)

The foregoing statements relate to distillery bonded warehouses. Equally as stringent regulations apply to general bonded warehouses. See Act of August 27, 1894. C. 349 (28 Stat., 564.)

While there is some variance in the decisions of the

courts as between the rights of creditors and holders of warehouse receipts for liquors there is unanimity upon the point that the interest of the Government therein is paramount and that there is no exclusive right of possession in the owner of such receipt such as was the fact in the Street case.

In re Miller Pure Rye Distilling Co., 176 F., 606,
Taney v. Penn. Nat'l Bank, 187 F., 689,
In re Roherer, 186 F., 997,
Pattison v. Dale, 196 F., 5.

The Circuit Court of Appeals, Third Circuit in the Taney case, 187 F., at page 699 said of the status of liquors under a warehouse receipt:

> "It is found as a fact in both cases, that the whiskey in question was in such bonded distillery warehouses of the United States, as above described, at the time it was pledged or sold as hereinbefore stated, and under the control and custody of the officers designated by law. That such control was exclusive, is apparent from the provisions of the law as above pointed out, and it seems like little less than absurd to say that the distiller was in possession of this property, when he could have been put in prison if he had attempted to take possession of it."

In the case of McCullough v. Large decided by the Circuit Court of Appeals of the Western District of Pennsylvania (20 Fed., 309) in an opinion which was concurred in by Mr. Justice Bradley, it was held:

> "Whiskey deposited in a bonded warehouse of the United States, and held therein for internal revenue tax due the Government, is virtually in the possession of the United States, and a sheriff

has no right to enter such a warehouse and seize, in execution, such whiskey as the property of the defendant in a writ of *fieri facias* in his hands, even though he may offer to pay the tax."

IN THE COLLECTION OF THE TAXES UPON LIQUOR THE GOVERNMENT DOES NOT LOOK TO THE OWNER OF THE WAREHOUSE RECEIPT NOTWITHSTANDING HE HOLDS THE EVIDENCE OF TITLE BUT RATHER TO THE DISTILLER AND THE SURETIES ON HIS BOND. SECS. 49 AND 54, ACT OF AUGUST 27, 1894 (28 STAT., 509). This is striking evidence of the fact that ther is no exclusive right of possession in the owner of a warehouse receipt such as existed in the Street case.

Warehouse certificates for bonded spirits form no part of the revenue system of the United States. Treasury Decision 1494.

Even stronger evidence than this is the fact that the Government has a first lien upon the liquor itself and for the non-payment of the tax or violation of the revenue laws the liquor is subject to seizure and forfeiture.

Hartman v. Bean, 99 U. S., 393; 25 L. Ed., 455,
United States Fidelity & Guaranty Co. v. U. S.,
220 F., 592.

The Attorney General of the United States, August 21, 1911, held that the purchaser of the warehouse receipt became the owner of the whiskey, "but without the right to remove it for beverage purposes except for export." This condition was one named in the War Prohibition Act, and so far as the Corneli case is concerned it clearly applies. By the same reasoning any provision in the National Prohibition Act or any other

law would prevent the removal of such liquor from the bonded warehouse.

The status of liquors held upon a warehouse receipt is for the foregoing reason wholly different from that of liquors purchased prior to the date when National Prohibition became effective stored in a private warehouse intended for personal use in the dwelling of the owner and reported to the commissioner as required by law, as was the fact in the Street case.

This Court was careful in its opinion in the Street case to restrict its decision simply to the facts as presented in that case, for it was said:

> "Without saying that there may not be other cases, the one at bar seems to be fairly within the scope of this obvious implication of Section 33."

There is also the further difference that the National Prohibition Act nowhere *expressly deals with liquors stored in a private warehouse.* The Court in the Street case considering this fact in connection with the provisions of Section 33 permitting the possession in the home of liquors acquired prior to the date the Act became effective held that the possession of such liquors in a private depository outside of the home was by implication a lawful possession within the exception created by Section 33, but when it comes to the status of liquors stored in bonded warehouses a different situation arises. It was with the problem of safeguarding the disposition of this vast quantity of liquors stored in bonded warehouses throughout the country that Congress specifically dealt. It was recognized that the successful enforcement of the law as well as the making effective the prohibition of the eighteenth amendment

depended upon restricting the distribution of this enormous accumulated stock of liquors to strictly non-beverage use. Hence Section 37 was inserted which explicitly provides the persons to whom and the purposes for which liquors in bonded warehouses may be disposed of. This court in the Street case points out that the custody of liquors by a private warehouse was not expressly prohibited for it is said:

> "It may be that the custody of liquors by a warehouse company was thus not declared to be unlawful because the writers of the Act did not have such a case in mind. * * * "

This is not true of liquors stored in bonded warehouses for Congress in Section 37 made specific provision for the disposition thereof which clearly negatives the contention made by the complainants in this case. The Street case dealing with an entirely different state of facts and liquor having an entirely different status under the National Prohibition Act is not controlling in this case.

Respectfully submitted,

WAYNE B. WHEELER,
Amicus Curiae.

FILED
MAR 28 1921
JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

CHARLES CORNELI,
Appellant,
vs.
GEORGE H. MOORE, Collector of Internal Revenue.
No. 174

GEORGE J. GHIO,
Appellant,
vs.
GEORGE H. MOORE, Collector of Internal Revenue.
No. 175

Appeals from the District Court of the United States for the Eastern District of Missouri.

Filed December 2, 1920.

MOTION TO ADVANCE APPEALS.

(27,989 and 27,990)

GLENDY B. ARNOLD,
ELLIOTT W. MAJOR,
Counselors for Appellants.

ST. LOUIS LAW PRINTING CO., 415 N. Eighth St. Bell, Main 1819.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

CHARLES CORNELI, Appellant, vs. GEORGE H. MOORE, Collector of Internal Revenue.	No. 632.
GEORGE J. GHIO, Appellant, vs. GEORGE H. MOORE, Collector of Internal Revenue.	No. 633.

Appeals from the District Court of the United States for the Eastern District of Missouri.

Filed December 2, 1920.

MOTION TO ADVANCE APPEALS.

(27,989 and 27,990)

Now comes Charles Corneli and George J. Ghio, by Elliott W. Major and Glendy B. Arnold, counselors for said appellants, and move this Honorable Court to advance their appeals, cases No. 632 and 633, on the docket of the court, and make an order setting them for argument and submission together, on Mon-

day, the 25th day of April, 1921, or as soon thereafter as will be consistent with the business and convenience of the Court, and as reasons therefor appellants state:

These cases are brought to enforce and test the right of the appellants, each of whom is the bona fide owner of one barrel of distilled spirits, on deposit in Government Bonded Warehouses of the United States, to remove same to their respective private dwellings, in the City of St. Louis, Missouri, and which are used as dwellings only, and to keep the same in said dwellings for the personal use of each appellant, the members of his family and his bona fide guests when entertained therein, and for such said uses only, in said private dwellings, respectively, as is now authorized and permitted by the "National Prohibition Act"; and, the possession of said spirits is not desired for the purpose of barter or sale, or of disposing of the same in violation of any law of the United States.

There are many thousands of persons owning small quantities of spirits, in Bonded Warehouses of the United States, which, like appellants, were lawfully acquired for private consumption in their dwellings only, and who have been denied the right to take possession of their property and remove same to their private dwellings for lawful uses therein.

According to actual tests and common experience the "outage" on distilled spirits on deposit in Government Bonded Warehouses, by leakage and evaporation, is approximately two gallons or more per annum. The loss to each appellant and to those who own distilled spirits and who are similarly situated as appellants has already been very great, and no doubt will extend into millions of gallons before these appeals would be reached in their regular order on the docket of this court, and an early disposition of these appeals will minimize this great and irreparable loss to appellants and other lawful owners.

The appellants are being denied the right to the lawful use of their property, lawfully acquired; and, being denied the right to the lawful use and enjoyment of same, their property is, by leakage and evaporation, daily being wasted, destroyed and lessened in quantity (same being in barrels and not bottled); and having been on deposit in said Government Bonded Warehouses for some years prior to the adoption of the Eighteenth Amendment to the Constitution of the United States and the enactment of the Volstead Act, if appellants are not permitted to remove same and take possession thereof, at an early date, a large part of their property will have been wasted and destroyed and, in effect, confiscated.

In addition to these facts and reasons why these appeals should be advanced and argued and submitted together, the cases present questions of great public interest, and also affect the revenues of the Government of the United States. The questions presented by the particular facts in each of these appeals, relative to the removal by the owner of distilled spirits lawfully acquired, from the Government Bonded Warehouse to the private dwelling of the owner, to be used therein only as permitted and authorized by the "National Prohibition Act", should be specifically settled, and that at an early date, so as to save appellants and other owners similarly situated from great and irreparable property loss.

Respectfully submitted,

GLENDY B. ARNOLD,
ELLIOTT W. MAJOR,
Counselors for Appellants.

In the Supreme Court of the United States.

OCTOBER TERM, 1921.

CHARLES CORNELI, APPELLANT, *v.* GEORGE H. MOORE, COLLECTOR OF INTERNAL REVENUE for the First District of Missouri, respondent.	No. 174.
GEORGE J. GHIO, APPELLANT, *v.* GEORGE H. MOORE, COLLECTOR OF INTERNAL REVENUE for the First District of Missouri, respondent.	No. 175.
WILLIAM H. BRYAN, APPELLANT, *v.* JOSHUA W. MILES, COLLECTOR OF INTERNAL REVENUE for the District of Maryland, and Richard S. Dodson, Federal Prohibition Director for the District of Maryland, respondents.	No. 428.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES.

It is with some hesitation that I venture to supplement the careful and, as I think, able brief of my associate, Assistant Attorney General Willebrandt, in the above-entitled cases.

It seems to me clear that these cases would probably never have been brought had not this court, in the case of *Street* v. *Lincoln Safe Deposit Co.* (245 U. S. 88) held that where an individual had lawfully purchased liquors for beverage purposes prior to July 1, 1919, and his supply was temporarily in a private storage warehouse, unconditionally subject to his control and to which he had access at any time for the purpose of removal, it was, in effect, as though he possessed them in his own home, and, on that account, could remove them thereto.

It is therefore only necessary to distinguish between the Street case and the instant cases to answer the contention of the plaintiffs, and this, in turn, involves the question whether there is any clear distinction between a Government bonded warehouse and a private warehouse.

In considering this question it may help the court if I describe with some particularity the exact nature of a Government bonded warehouse and supplement it by a brief statement of the pertinent statutes which prohibited the transportation or delivery of liquors, except under certain conditions and for certain purposes.

As showing the mischief that would be wrought in defeating the policy of the prohibition amendment and statutes, if the contention of the plaintiffs were to prevail, I also append a statement which the prohibition commissioner has given me, under date of December 1, 1921, and which shows the

amount of distilled spirits that were in Government bonded warehouses on June 30, 1921. It will thus appear that if the owners of these spirits can remove them from the warehouses to their homes for beverage purposes, a great volume of such spirits will thus be released, and, having regard to the widespread and reckless violation of the prohibition statutes, it is not difficult to predict that, in that event, much of this great reservoir of distilled spirits would never reach the homes, but would be diverted to bootleggers and other violators of the law.

The sections of the Revised Statutes herein referred to will be most conveniently found in the Compilation of Internal Revenue Laws of 1920, issued by the Treasury Department.

Section 3271, on page 222 of said compilation, provides that the distiller must provide at his own expense a warehouse to be situated on and constitute part of his distillery premises

> "and to be used only for the storage of distilled spirits of his own manufacture until the tax thereon shall have been paid * * *"

and

> "when approved by the Commissioner of Internal Revenue, on report of the collector, is hereby declared to be a bonded warehouse of the United States, to be known as a distillery warehouse, and shall be under the direction and control of the collector of the district, and in charge of an internal-revenue storekeeper assigned thereto by the commissioner."

Section 3274, Revised Statutes, page 224 of the compilation named, reads as follows:

> Every distillery warehouse shall be in the joint custody of the storekeeper and the proprietor thereof. It shall be kept securely locked, and shall at no time be unlocked, or opened, or remain open, unless in the presence of such storekeeper or other person who may be designated to act for him, as provided by law; and no articles shall be received in or delivered from such warehouse except on an order or permit addressed to the storekeeper and *signed by the collector having control of the warehouse.*

Under section 3260, Revised Statutes, as amended, pages 211 and 212 of said compilation, the distiller is required to execute a bond conditioned that he shall faithfully comply with the provisions of law relating to the duties of the business of distilling and shall pay all penalties incurred or fines imposed on him, and, under section 3293, as amended, pages 239, 240, and 241, of the compilation, the distiiler is required to give a warehousing bond monthly or annually (Form 80 or 359 as the case may be), conditioned

> "that the principal named in said bond shall pay the tax on spirits as specified in the entry, or cause the same to be paid, before removal from said distillery warehouse, and within eight years from the date of said entry, and the penal sum of such bond shall not be less than the amount of the tax on such distilled spirits."

Section 600–b of the revenue act of 1918, page 194 of said compilation, modifies the said section 3293, and authorizes the execution of a bond to enable the distiller to retain spirits in bonded warehouse after the eight-year period has expired.

Under sections 51 and 52 of the act of August 27, 1894 (28 Stat. 509), pages 247 and 248 of said compilation of 1920, provision is made for the establishment of general bonded warehouses. Section 51 provides in part:

> Each of which warehouses shall be in the charge of the storekeeper and gauger to be appointed, assigned, transferred, and paid in the same manner as such officers for distillery warehouses are now appointed, assigned, transferred, and paid. Every such warehouse shall be under control of the collector of internal revenue of the district in which such warehouse is located, and shall be in the joint custody of the storekeeper and proprietor thereof, and kept securely locked, and shall at no time be unlocked or opened, or remain open except in the presence of such storekeeper or other person who may be designated to act for him, as provided in the case of distillery warehouses; and such warehouses shall be under such further regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe * * *.

Each proprietor of a general bonded warehouse, or a special bonded warehouse, must give a bond conditioned on the proper protection and safeguard-

ing of the spirits deposited therein. Each distillery warehouse, general bonded warehouse, and special bonded warehouse provided for as herein indicated, as will be seen, is under the control of the collector of the district and in the joint custody of the Government officer and the proprietor, but, as a matter of fact, the storekeeper-gauger, who is employed and paid by the Government, carries the key to the Government lock on the door of each such warehouse, and the proprietor can not at any time have access to the warehouse except by permission of the storekeeper-gauger or officer having charge thereof. (See secs. 3271 and 3274, R. S., act of Aug. 27, 1894, and act of Mar. 3, 1877.) Spirits made from materials other than fruit produced at a distillery and stored in the distillery warehouse on the distillery premises may be transferred under a transportation and warehousing bond to a general bonded warehouse for storage therein. Brandy produced at a fruit brandy distillery may be likewise transferred under a transportation and warehousing bond for deposit and storage in a special bonded warehouse. The spirits are transferred untaxpaid under these bonds and the distiller in each case gives the transportation and warehousing bond.

In addition to thus providing warehouses under internal revenue laws, the proprietor of the distillery bonded warehouse or general or special bonded warehouse must procure a permit under Title II of the national prohibition act, and any removal of liquors from a distillery bonded warehouse to a general

bonded warehouse, or from a brandy distillery to a special bonded warehouse, must be pursuant to permit to purchase, Form 1410–A. The common carrier transporting the liquor must also have a permit to transport and can not deliver same to the consignee, in any case, except upon verified or sworn copy of such permit to purchase.

Under section 15 of the act of August 10, 1917, the importation of distilled spirits for beverage purposes was prohibited, and the manufacture of distilled spirits for beverage purposes was also prohibited thereby after 11 o'clock p. m., September 8, 1917.

Under the act of November 21, 1918, commonly known as the war-time prohibition act, the use of food or feed materials was prohibited on and after May 1, 1919, in the production of intoxicating malt and vinous liquors for beverage purposes, and the withdrawal of distilled spirits from Government warehouses after July 1, for beverage purposes was also prohibited except for export. This act also prohibited the sale of intoxicating liquors for beverage purposes after July 1, 1919. It will be observed, however, that although the withdrawal for beverage purposes, except for export, was prohibited after July 1, 1919, there was no prohibition in this or any other act on the transportation of intoxicating liquors for beverage purposes until the passage of the national prohibition act, which became effective in this respect on January 17, 1920. Thus any person who owned distilled spirits on warehouse receipts produced prior to September 9, 1917, deposited in

Government bonded warehouses, such as distillery, general and special bonded warehouses, might have had the same tax paid and withdrawn by the distiller thereof any time prior to July 1, 1919, for beverage or other purposes, and might freely have had the liquors transported to his residence for beverages or other purposes at any time prior to January 17, 1920.

Under section 3 of Title II of the national prohibition act it became illegal after January 17, 1920, to manufacture, sell, barter, *transport*, import, export, *deliver*, *furnish*, or *possess* any intoxicating liquor, except as authorized in the national prohibition act, and all the provisions of the act are to be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.

In the case of *Street* v. *Lincoln Safe Deposit Company and Daniel L. Porter*, decided by the United States Supreme Court, the facts were that Street procured the liquors for beverage purposes when the same might legally be purchased prior to July 1, 1919. The liquors presumably were legally made, fully tax paid, had beverage status, were stored in the room or rooms in the warehouse building, under the exclusive control and right of entry of Street. Mr. Street might freely have removed those liquors at any time prior to January 17, 1920, to his residence for beverage purposes, without violating any law. Inasmuch as he did not thus remove them, Daniel L. Porter attempted to seize the liquors by reason of the fact that they were not in Street's residence

and had not been covered by a nonbeverage permit. Street resisted and carried the matter into the courts and, under the decision of this court, it was finally held that the removal of the liquors from such place of storage in the warehouse building to the residence of Street would not be such transportation as is prohibited by section 3 of Title II of the act, and the liquors were not forfeitable because not in Street's dwelling in the exact manner provided by section 33 of Title II of the national prohibition act.

It will thus be seen that there is little or no analogy between the liquors stored as herein indicated by Street, and liquors untaxpaid, stored in a Government bonded warehouse under the control of the collector of the district and joint custody of the storekeeper gauger representing him at the warehouse and the proprietor of the warehouse. Such liquors stored in a Government bonded warehouse, owned on warehouse receipts, could not have been legally withdrawn for beverage purposes after July 1, and be freely removed to the residence of the owner for beverage purposes after that date and prior to or after January 17, 1920.

The act of November 21, 1918, ran concurrently with the national prohibition act on and after January 17, 1921, until finally repealed by a joint resolution of Congress on March 3 or 4, 1921. While the act of November 21, 1918, is no longer in effect, it is clearly apparent that the distiller, or other person, may not under section 3 of Title II of the national prohibition act *furnish or deliver* the liquor

owned on any such warehouse receipt and a common carrier or the owner may not *possess, transport or deliver* such liquors now or at any time subsequent to January 17, 1920, for beverage purposes. Furthermore, the officials of the Treasury Department may not legally issue a permit, or authorize the issuance of a permit, to enable the distiller to deliver or furnish such liquor stored in bonded warehouses at this time or for common carriers or the owners to transport or possess same for beverage purposes.

There is submitted herewith a table showing the quantity of distilled spirits of various kinds in distillery and general bonded warehouses, brandy in special bonded warehouses and industrial alcohol in industrial alcohol bonded warehouses. It will be understood, however, that the alcohol in the industrial alcohol bonded warehouses was produced and deposited therein on and after May 1, 1920, under the provisions of Title III of the national prohibition act and regulations 61 issued pursuant thereto.

Respectfully submitted.

JAMES M. BECK,
Solicitor General.

DECEMBER 5, 1921.

APPENDIX.

TREASURY DEPARTMENT,
BUREAU OF INTERNAL REVENUE,
Washington, December 1, 1921.

The following figures show the amount of distilled spirits as known to trade remaining in distillery, general bonded, special bonded and industrial alcohol bonded warehouses on June 30, 1921:

[Statement in tax gallons.]

Distillery bonded warehouses:	
Whisky	37,254,400.8
Rum	395,156.4
Gin	791,250.9
High wines	1,654.5
Alcohol	207,656.7
Neutral or cologne spirits	321,451.5
General bonded warehouses:	
Whisky	2,707,543.0
Rum	4,262.7
Gin	94,662.0
High wines	516.1
Alcohol	433,289.4
Neutral or cologne spirits	47,555.2
Special bonded warehouses:	
Tax gallons brandy	641,558.1
Industrial alcohol bonded warehouses:	
Proof gallons alcohol	7,631,454.02

JAMES E. JONES,
Assistant Prohibition Commissioner.

○

FILED
DEC 14 1921
WM. R. STANSBURY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 174.

CHARLES CORNELI, APPELLANT,

vs.

GEORGE H. MOORE, COLLECTOR OF INTERNAL REVENUE.

No. 175.

GEORGE J. GHIO, APPELLANT,

vs.

GEORGE H. MOORE, COLLECTOR OF INTERNAL REVENUE.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

No. 548.

WALTER A. EASTES, APPELLANT,

vs.

GEORGE F. CRUTCHLEY, COLLECTOR OF INTERNAL REVENUE, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

REPLY AND SUPPLEMENTAL BRIEF FOR APPELLANTS.

GLENDY B. ARNOLD,
ELLIOTT W. MAJOR,
Attorneys and Counselors for Appellants.

(27,989, 27,990, 28,503.)

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 174.

CHARLES CORNELI, APPELLANT,

vs.

GEORGE H. MOORE, COLLECTOR OF INTERNAL REVENUE.

No. 175.

GEORGE J. GHIO, APPELLANT,

vs.

GEORGE H. MOORE, COLLECTOR OF INTERNAL REVENUE.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

No. 548.

WALTER A. EASTES, APPELLANT,

vs.

GEORGE F. CRUTCHLEY, COLLECTOR OF INTERNAL REVENUE, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

REPLY AND SUPPLEMENTAL BRIEF FOR APPELLANTS.

I.

Corneli and Eastes Cases.

In our reply brief we will first give consideration to the Corneli and Eastes cases, Nos. 174 and 548, because they are alike and with but one question involved in their considera-

tion, to wit, "transportation." The reply brief in the case of William H. Bryan *vs.* Joshua W. Miles, collector, *et al.*, No. 428, has already been filed by Bryan, Jones and O'Neill, attorneys in charge, and the arguments and answers to the briefs filed by the Assistant Attorney General, the Solicitor General, and Mr. Wheeler. *Amicus curiæ* in that case will also apply in these cases.

Section 37 of title II of the National Prohibition Act provides that—

> "Nothing herein shall prevent the storage in United States bonded warehouses of all liquor manufactured prior to the taking effect of this act or prevent the transportation of such liquor to such warehouses."

It is conceded by the Government that each of these two appellants lawfully acquired and owned their spirits prior to the effective date of the Eighteenth Amendment and the Volstead Act, Corneli having purchased his barrel in the spring of 1917 and Eastes in the summer of 1917; that they have been continuously since the purchase and are now the lawful owners of said spirits; that they are now lawfully stored; that each appellant desires to transport same from a lawful place of storage (general bonded warehouse) to another lawful place of storage or where same may be kept (dwelling of the owner), and that such spirits are desired to be used in such dwellings for lawful purposes only and as provided in section 33 of the National Prohibition Act.

The Government has utterly failed in its effort to distinguish these cases from the case of Street *vs.* Lincoln Safe Deposit Company, 254 U. S., 88, decided November 8, 1920. The admitted facts and circumstances in the instant cases

bring them squarely within the provisions and principles announced in the Street case. In fact, Corneli and Eastes occupy stronger positions than did Street, because there is no question but what these spirits are in lawful storage, whereas there was some question as to the storage being lawful in the Street case. Our "use," "possession," "keeping," "delivery," and "transportation," like that in the Street case, do not violate sections 3, 21, 25, or any other provision in the National Prohibition Act. Nowhere in the Volstead Act can a word or line be found prohibiting the removal of such lawfully acquired spirits from bonded warehouses to the home of the owner for lawful consumption therein by himself, his family, and his *bona fide* guests. There being no prohibition against it, nothing more is needed or required for its lawful removal.

The court said, in the Street case, that the first section of the Eighteenth Amendment "does not indicate any purpose to confiscate liquors lawfully owned at the time the amendment should become effective and which the owner intended to use in a lawful manner." Our spirits were "lawfully owned at the time the amendment" became effective, and it is admitted "the owners intended to use (same) in a lawful manner."

That the taking and removing of the spirits from the warehouses to the respective dwellings of Corneli and Eastes is not (in the language of the court) "a delivery of them within the meaning of this third section." And the court, further speaking, said, "that transportation of the liquors to the home of appellant, under the admitted circumstances, is *not such as is prohibited by* the section (section 3) is too apparent to justify detailed consideration of the many provisions of the

act inconsistent with a construction which would render such removal unlawful."

The Eighteenth Amendment does not prohibit the personal "use" or consumption of spirits by the owner, and the court said that "Congress was concerned with the great problem of preventing the manufacture and sale of intoxicating liquors for beverage purposes in the future."

The reasons advanced by the Government in its brief as to why appellants are not entitled to the relief for which they pray are as follows:

A.

"THAT A PERIOD OF SEVEN MONTHS AFTER THE PASSAGE OF THE WAR-TIME PROHIBITION LAW WAS GIVEN TO OWNERS LIKE CORNELI TO REMOVE THEIR SPIRITUOUS LIQUORS FROM DISTILLERIES AND BONDED WAREHOUSES TO THEIR HOMES, AND THIS COMPLAINANT REFUSED AND NEGLECTED TO DO AND NOW HE SEEKS TO READ INTO THE LAW AN INTERPRETATION FATHERED BY A DESIRE TO CURE HIS OWN NEGLECT."

1. The Government has entirely missed the way, forgotten dates, and misread the War Time Act. The War Time Prohibition Act was an emergency and temporary law and prevented the sale of liquors for beverage purposes during its life and also prevented the withdrawal of spirits from bond for beverage purposes during its life. It did not give owners seven months to withdraw spirits from bond for beverage purposes or require them to do so under penalty of forfeiture. The Congress gave this time to those in the business to sell their spirits out of bond, and thereafter sealed the balance in bond for beverage purpose until demobilization took place.

etc. The policy of the Government was to keep same in bond, and not permit their withdrawal for beverage purposes during this temporary time only. Appellants adopted the policy of the Government and by their action neither lost nor forfeited any rights whatever, and the law itself visited none. They relied on the fact and right they could withdraw when War Time prohibition ended.

2. The War Time Prohibition Act was passed November 21, 1918, just ten days after the signing of the armistice, but was not effective until June 30, 1919. The Eighteenth Amendment to the Federal Constitution was ratified by a sufficient number of States January 16, 1919, but the Amendment did not become effective until January 16, 1920. The Eighteenth Amendment did not prevent the withdrawal of such spirits from bond and indeed was not yet effective. The Volstead or National Prohibition Act had not been passed and no reason to believe or presume it would ever be introduced or passed, and certainly that no act would be passed undertaking to interfere with the appellants' rights of withdrawal.

So when War Time prohibition, a temporary act, became effective June 30, 1919, the Eighteenth Amendment was not in effect and the Volstead Act had not been passed, and when it did pass later and on October 28, 1919, it did not become effective until January 16, 1920. After the War Time Prohibition Act became effective, it extended into the National Prohibition Act, in fact, the War Time Prohibition Act was in force until repealed, March 3, 1921. We were prevented from withdrawing our spirits from bond for beverage purposes *by the War Time Prohibition Act* and *not by the Volstead Act.*

3. There is no provision of any law whereby we have lost or forfeited our right to withdraw and certainly no act done estopping appellants from asserting their rights and securing their relief. It was expected the War Time Prohibition Act would terminate before the National Prohibition Act became effective. We had no chance to withdraw our spirits. Appellants relied on the fact they were prohibited from such withdrawal during the life of *War Time prohibition only*, and on its termination could withdraw same for said lawful purposes and uses.

B.

"THAT APPELLANTS FAILED TO REPORT WITHIN TEN DAYS AFTER THE EIGHTEENTH AMENDMENT BECAME EFFECTIVE 'THE KIND AND AMOUNT OF INTOXICATING LIQUORS IN THEIR POSSESSION.'"

This is a most astounding position.

1. We had not withdrawn our spirits from bond and could not because of the War Time Prohibition Act. The requirement as to making a report in the Volstead Act was for liquors *out of bond* and in the possession of the owners (sec. 33, title II, Volstead Act).

2. The Commissioner to whom the Government in its brief says we should have reported, had complete records and knew our spirits were in the bonded warehouse over which he had joint control with the proprietor. A report would have been an absurdity.

3. We had legal title and constructive possession, but the property was on legal deposit in the bonded warehouse, over

which the Government had joint control with the proprietor and had a key to the building. Spirits possessed *out of bond* were reported and not spirits possessed *in bond*.

4. Mr. Wayne Wheeler, in his brief, says we were never in possession. He cites McCullough *vs.* Large, 20 Fed., 309, and quotes as follows:

> "Whiskey deposited in a bonded warehouse of the United States, and held therein for internal revenue tax due the Government, is virtually in the possession of the United States."

5. Thus the Government in its brief and also our esteemed "*amicus curiæ*" blow hot and cold. They say we should have reported the liquor under section 33 of the Volstead Act because we were in possession of the spirits and, therefore, having failed to so do, have forfeited our rights, although, if we were in such possession as there contemplated, the law provides no forfeiture. Then they say we are not within the provision of the Street case because the spirits were never in our possession, no matter if the Government did arbitrarily refuse to accept the tax of $6.40 per gallon and let us take physical possession and remove from bond to our homes.

6. We speak of the liquor as being in a Government bonded warehouse; that simply means it is a warehouse, privately owned, private property. The owners charge for storage and in some instances for insurance where the owners of the spirits do not cover same themselves. The proprietors and owners of these bonded warehouses are now making increased charges for storage and guarding spirits on deposit. The Secretary of the Treasury, Hon. A. W. Mellon, calls at-

tention to this fact by a letter or document printed in the *Congressional Record* of November 4, 1921, at page 8119.

The only interest the Government has in these distilled spirits is to collect the tax on same, and this tax is a lien on the property (spirits) for which the warehouseman gives bond, and hence these warehouses are referred to as bonded warehouses.

The Assistant Attorney General in her brief erroneously states that these warehouses are Government institutions and seems to have the idea they are owned and controlled by the Government. These warehouses are provided for by statute and they are all privately owned.

Appellants are the owners of the spirits they have on deposit in these warehouses and are in the constructive possession of same, as this Court decided in Gibbons *vs.* Stevens, 8 How., L. C., 399.

The proprietor is the "bailee" of appellants for hire, and possesses same for them, and they are held and stored subject to payment of the tax on removal. The proprietor of the warehouse gives the warehouse receipt for the spirits and in which the amount of charge per gallon for storage is fixed and which constitutes the storage contract between the proprietor and the owner of the spirits.

C.

"THAT APPELLANTS UNDER SECTION 6, TITLE III, OF THE VOLSTEAD ACT MAY TAKE OUR SPIRITS FROM BOND AND DENATURE SAME."

That does not answer anything or meet any issue in the case.

1. We may do this if we wish. It is a privilege of which we may avail ourselves. It is a mere directory provision, "may."

2. If this provision were mandatory, "shall," then it would violate the Fifth and Eighteenth amendments and be out of tune with the other provisions of the Volstead Act and out of harmony with the principles in the Street case.

D.

"THAT BECAUSE OF THE STATEMENT OF THE ASSISTANT PROHIBITION COMMISSIONER AS TO THE AMOUNT OF SPIRITS IN BOND AND APPENDED TO SOLICITOR GENERAL BECK'S BRIEF, A GREAT RESERVOIR OF SPIRITS WOULD BE RELEASED IF CORNELI AND EASTES AND BRYAN, APPELLANTS, CAN REMOVE THEIR SPIRITS TO THEIR RESPECTIVE HOMES. THE SOLICITOR GENERAL SAYS FURTHER: "MUCH OF THIS GREAT RESERVOIR OF DISTILLED SPIRITS WOULD NEVER REACH THE HOMES, BUT WOULD BE DIVERTED TO BOOTLEGGERS AND OTHER VIOLATORS OF THE LAW."

1. This is not intended as an argument, legal, equitable or otherwise. It is used as a "bogey man." When we consider constitutional questions and property rights, the "bogey man" has no place and deserves no thoughtful consideration.

2. Those similarly situated as Corneli and Eastes and who bought for themselves a barrel or two for future consumption are few perhaps.

3. There may be others similarly situated, but of such a fact there is no presumption in law or equity. The number

and amount are bound to be limited, but all this is beside the question.

4. The Solicitor General says that in transit from the warehouse to the home the bootlegger and other violators will get a large part of it. That is an advocacy that people must be denied their legal and equitable rights, because the administrative machinery might possibly break down.

5. The Bureau of Internal Revenue, as this Court said in the Street case, has administrative power and authority to provide for the transportation from the warehouse to the home. I have faith in the efficiency and integrity of the Bureau of Internal Revenue. It can send its agents along to see that such spirits safely and honestly reach the homes of the owners. So this borrowed fear is imaginary and mere "moonshine."

6. He says there are 40,000,000 gallons of all kinds of spirits in bond. How much of this was manufactured and legally acquired before the effective date of the Eighteenth Amendment, and held and owned in the way and manner held and owned by appellants, no one is or can be advised. This, however, in nowise affects appellants in their legal rights. Just say, for the sake of argument, all of it would go to the homes. The tax is $6.40 per gallon. That would give the Government a total revenue of $256,000,000—money in, not money out.

7. From an economical, financial and good Government standpoint, the great masses, including those for and those against prohibition, had rather see the $256,000,000 in the Treasury and the spirits in the homes of the lawful owners

and the bootlegger out of business than for such spirits to remain in bond. They had rather see the Government get the revenue than to see the bootlegger flourish like a "Green Bay Tree." The $256,000,000 will relieve that much indebtedness and, to that extent, relieve the people of their many heavy and excessive burdens of taxation; relieve the enforcement officers of much useless and unnecessary worries and bring about an earlier end to the use of spirits as a beverage, and that legally.

We made application to the collector in the proper districts for the withdrawal of our distilled spirits, lawfully acquired and owned before the effective date of the Eighteenth Amendment and of the National Prohibition Act, and also tendered to the collector of the district where deposited the tax of $6.40 per proof gallon, same being the proper tax and amount due the Government, and such collector should have issued his order to the storekeeper of the respective warehouses, where our spirits were on lawful deposit for the delivery, and as provided in section 3294 R. S., which is section 6036, United States Compiled Statutes 1916, reading as follows:

> "Any distilled spirits may, on the payment of the tax thereon, be withdrawn from the warehouse on application to the collector of the district in charge of such warehouse on making a withdrawal entry in duplicate and in the following form: (Here follows the form of the entry), and on payment of the tax, the collector shall issue his orders to the storekeeper in charge of the warehouse for the delivery."

II.

The Eighteenth Amendment Is Prospective in Its Operation and Our Spirits Are Property.

That the Eighteenth Amendment is prospective in its operation and does not apply to liquors manufactured and lawfully owned prior to its effective date is certain. We here advance some of the reasons.

(*a*) Because of the rule of law that all amendments are prospective, "unless on the fact of the amendment a contrary intention is manifest beyond reasonable quetsion" (Shreveport *vs.* Cole, 129 U. S., p. 36).

(*b*) Because Congress in sections 33 and 37 of title II of the National Prohibition Act has twice construed it as prospective.

(*c*) Because this Honorable Court in Street *vs.* Lincoln Safe Deposit Company has construed it as prospective and further said that section 33, title II, of the Volstead Act applied to liquors manufactured and lawfully acquired before the effective date of the act.

(*d*) Because any other construction would bring the Eighteenth Amendment in conflict with the Fifth Amendment or bring about a construction rendering the Volstead Act invalid in this respect.

(*e*) Because Congress in public document passed November 23, 1921, amended subdivision (*a*) of section 600 of the Revenue Act of 1918, relating to the "Tax on beverages, etc.," so as to require the payment of $6.40 per proof gallon

on liquors removed from bond and used for beverage purposes.

These points we will fully argue and present in the case of George J. Ghio *vs.* George H. Moore, collector, No. 175, found in the later pages and part of this reply brief.

That spirits lawfully owned prior to the effective date of the Eighteenth Amendment and the National Prohibition Act are property is no longer open to question, and neither the amendment nor the act has prevented their use in the home of the owner for beverage purposes nor their transportation thereto from any lawful place of storage.

III.

Congress Has in the National Prohibition Act Authorized the Use of Spirits Lawfully Owned Prior to Its Effective Date for Beverage Purposes in the Home of the Owner and Has Authorized Its Transportation to the Home of the Owner for Such Purposes.

1. Section 33, title II, of the Volstead Act authorizes the use of spirits as a beverage in the home. This Court in the Street case said it applied to liquors lawfully owned prior to the effective date of the amendment and the act. That such liquors can be used as a beverage in the home cannot be questioned. The place of storage is of no moment, just so the same is lawfully stored.

2. Section 37, title II, of the Volstead Act, hereinbefore set out, authorizes *"All liquors manufactured prior to the taking effect of this act"* to be stored in United States bonded warehouses. Our liquors were manufactured prior to the taking effect of the act, *and this is the only require-*

ment or limitation, and they are, therefore, now lawfully stored and possessed. One can remove such liquors from his home and so store same and transport same back again. The Government is not attempting to deceive and to trap its citizens. The section authorizes "*transportation of such liquors to such warehouses,*" and of course under the same power or authority can retransport same to the home.

So here we have specific legislative authority and sanction to "*use*" such liquors in the home of the owner for beverage purposes; we have specific legislative authority and sanction to "transport" such liquors manufactured prior to the effective date of the Volstead Act from the home to the general bonded warehouses for purpose of deposit and the certain implied power and right to retransport same to the home. This section was not enacted for a piece of deception or to practice a deceit and entrap the citizen as to his property. Certain it is, further, there is no prohibition against such "transportation."

These cases are within the National Prohibition Act and within the principles announced and the construction given in the case of Street *vs.* Lincoln Safe Deposit Company. The amendment is prospective in its operation and any one of these reasons is sufficient and nothing more need be said.

IV.

The Ghio Case, No. 175.

We contend in this case that the Eighteenth Amendment, when properly construed, does not take from the owners of liquor, lawfully acquired before its effective date, the legal

right to thereafter sell it for a beverage purpose, nor does it give Congress the power to do so. We are not concerned here about the power of the people by constitutional amendment to take from such owners of liquor their right to sell it after the effective date of the amendment. We are merely trying to determine whether the people have exercised that power.

If the amendment makes unlawful the sale of liquor lawfully acquired before its effective date, then it must be held that its intended effect is to destroy vested rights in existing private property. That means confiscation pure and simple without pretense of compensation. The only possible way that a constitutional amendment can be made to strike down vested rights in property is by inserting in it an express declaration to that effect or by judicial construction. Such an amendment then becomes a retrospective law. It must be conceded that there is no express declaration contained in this amendment making it retrospective in its operation. If it is to have that effect, then it must be by the judgment of this Court.

When a constitutional amendment does not contain an express retrospective declaration, the legal presumption is that its framers did not intend that it should have a retrospective effect, and this is true notwithstanding the fact that the wording of the amendment appears to have that effect. Most of our written laws in derogation of existing property rights are susceptible of a retroactive operation, but they are never so construed unless it appears beyond a reasonable doubt that they were so intended. There is no principle of law which has received such universal sanction in this country and England as that which forbids the courts to construe

statutes affecting vested rights so as to give them a retroactive effect. It is usually forbidden by the due-process clauses of the constitutions of all the States and of the United States. Many of the States have regarded retrospective laws, and hence retrospective construction, as so offensive to a decent sense of justice that they have expressly forbidden, by their constitutions, the enactment of such laws. Of course, such constitutional provisions are absolute prohibitions against retrospective construction by the judicial power.

Lewis, in his revision of Sutherland's work on Statutory Construction, lays it down, as the sum of the adjudicated cases, of which he cites a most voluminous number, that a statute will never be given a retroactive operation "unless the language employed in the enactment is so clear it will *admit of no other construction.*" "It is always presumed," says this author, "that statutes were intended to operate prospectively and all doubts are resolved in favor of such a construction," and "that these same rules apply to constitutional provisions." This Court, back in its early history, has declared as "sacred" the principle "that laws by which human action is to be regulated look forward, not backward, and are never to be considered retrospectively unless the language of the act should render that *indispensable.*" In this same case the court denounces as "odious" a construction which gives an act a retroactive effect. (See Reynolds *vs.* McArthur, II Peters, 417, 437, and Ladiga *vs.* Rowland, II How., 581, 589.)

It is axiomatic that lawmakers know the law. This Court will conclusively presume that Congress knew and has always known of the existence of this old and familiar rule which forbids the courts to give its enactments a retroactive

operation. If it be conclusively presumed that Congress knew of this rule and had it in mind when it framed the amendment, is not that fact all but conclusive proof that Congress also knew and intended that it should be applied in the construction of this amendment. Especially is this true when it is not made to appear that a contrary construction is "*indispensable*" to the efficacy of the amendment.

The method by which Congress, in framing the amendment, has undertaken to accomplish prohibition shows, beyond doubt, that the survival of the right, under the reasonable regulations already prescribed, to sell the liquor in bond at the effective date of the amendment will not render its provisions nugatory or deprive the amendment of its efficacy. The decision of this Court in the Street case, the rulings of the Commissioner of Internal Revenue, and section 33 of the Volstead Act show conclusively that Congress intended that the people should have the lawful right to consume the immense stocks of liquors on hand at the effective date of the amendment. These facts further show that Congress did not intend to attempt to bring about complete prohibition until those stocks of liquors were consumed. If this contention is sound, then it naturally follows that permitting the sale for beverage uses of liquors now in bond will not destroy the efficacy of the amendment but will rather be in aid of it. Put in another way, the framers of the amendment have manifested a clear intention that the amendment should have a prospective operation from and after its effective date. This construction is strongly sustained when we take into account the facts and circumstances confronting Congress when it framed this amendment. Congress cannot be convicted of an intent to needlessly destroy hun-

dreds of millions of dollars worth of property except upon proof of such intent beyond a reasonable doubt.

V.

According to a statistical abstract of the United States for the year of 1919, published by the Bureau of Foreign and Domestic Commerce of the Department of Commerce, there was being consumed annually in the United States at the time this amendment was framed more than two billion gallons of intoxicating beverages. In 1914 the country consumed more than two billion two hundred and fifty million gallons of these beverages. Of course, the production kept apace of the consumption. This report shows that during the six years immediately preceding the effective date of the amendment we produced 371,261,868 gallons of distilled spirits alone more than was consumed during that period of time. While during the period which followed our entry into the World War both the production and consumption of these liquors were greatly reduced, yet that unexpected result was unknown and consequently not considered by Congress at the time it had agreed upon the first and second sections of this amendment. Congress, knowing that our annual consumption of these beverages amounted to more than two billion gallons, undoubtedly framed this amendment in anticipation of there being hundreds of millions, if not billions, of gallons of them in existence at the effective date of the amendment. Another important matter which Congress undoubtedly took into consideration is that the Government was levying and collecting annually, prior to our entry into the war, more than two hundred and fifty million dollars as taxes upon intoxicating

beverages. The Annual Report of the Commissioner of Internal Revenue for 1921, at page 8, shows that the Government received from this source during the fiscal year which ended nearly six months *after* the ratification of the amendment the enormous sum of $483,050,854.47. May we not assume that Congress knew that these immense stocks of liquors were and would be made for but one purpose, and that was to be sold for beverage uses; that aside from their use as beverages they had no other substantial value. Moreover, there was to be considered the incalculable loss, without the hope of compensation, to be inflicted as a consequence of prohibition by the partial destruction of the properties used in the manufacture and distribution of these beverages which was not to be avoided.

With these circumstances confronting Congress, how was it to accomplish prohibition? Was it to be done immediately or gradually and by degrees? There were but these two ways open to Congress, but either was bound to be followed by losses beyond reckoning. But immediate prohibition meant the useless destruction of existing property. Immediate prohibition was to be accomplished merely by inserting a declaration to that effect in the amendment, and when that was done the drinking of intoxicating liquor would have immediately become unlawful upon the effective date of the amendment. But the immense stocks of these liquors which were bound to be in existence at that date would have been all but destroyed. This would have been a wanton, and hence useless, destruction of private property. We think these considerations strongly reinforce the legal presumption that the amendment was not intended to be retroactive.

VI.

The wording of the amendment shows that Congress intended to avoid confiscation, because the amendment does not make unlawful the consumption of those intoxicating liquors, as beverages, which were manufactured prior to the effective date of the amendment. There is great significance in this fact. By the enactment of section 33 of the Volstead Act, Congress has construed the amendment as not giving it the power to make unlawful the consumption of intoxicating liquors as beverages which were manufactured prior to its effective date. If it were given such power, then section 33 is in direct violation of the amendment, because that section expressly authorizes the consumption of such liquors. The avowed purpose of the amendment is to put an end to the use of intoxicating liquors as beverages. If it was intended by the framers of the amendment that this end should be accomplished immediately upon its effective date, then Congress would have been given the power to make it unlawful to drink intoxicating liquors as beverages manufactured before the effective date of the amendment as well as afterwards. That it is given the power to prohibit the drinking of such beverages manufactured after the effective date of the amendment cannot be denied, but by withholding from Congress the power to apply this prohibition to liquors manufactured before the taking effect of the amendment shows that, so far as the drinking of those liquors is concerned, the amendment was not to have a retroactive effect. This Court in the Street case, has held, in effect, that the amendment, in one of its most important prohibitions, is not to have a retroactive effect. That decision

must now be considered as a part of the amendment. The amendment expressly prohibits the transportation of intoxicating liquors for beverage purposes. Such liquors manufactured prior to the effective date of the amendment are as much within the apparent meaning of the terms of this prohibition as those manufactured subsequently, yet the court has held that the transportation of liquors manufactured prior to its effective date from a place of lawful storage to the dwelling of the owner for personal consumption is not prohibited by the amendment. The Commissioner of Internal Revenue has made a like ruling, permitting the transportation of intoxicating liquors for beverage purposes from one *bona fide* dwelling of the owner to another *bona fide* dwelling of such owner. Certainly if John Doe changes his residence from New York city to Washington city and ships his private stock of liquors from New York to Washington, that is a transportation of intoxicating liquors for beverage purposes, yet such transportation is held not to be in violation of the amendment. Do not these rulings of the court and the Commissioner of Internal Revenue show that the amendment was not intended to have a retroactive operation in respect to one of its most important prohibitions? If the amendment is not to be construed retroactively so as to prohibit the transportation of intoxicating liquors manufactured prior to its effective date, where is the sense or logic in holding that the prohibition against the sale of such liquors shall have a retroactive effect? To hold that the prohibition against the sale of intoxicating liquors shall be given a retroactive effect, and that the prohibition against transportation shall not be given such effect is to recast the amendment.

The reason given by the court, in the Street case, for declining to apply the prohibition contained in the amendment to the transportation of the liquors, in that case, is that such ruling would result in confiscation of those liquors. Congress, in framing the amendment, refrained from giving it power to prohibit the consumption of liquors as beverages for the evident purpose of avoiding confiscation of liquors manufactured prior to its effective date. Why will not the same reasoning sustain, with equal force, a like ruling as to the prohibition against the sale of liquor? We think that what we have said shows that the amendment was not intended to prohibit the sale of intoxicating liquors for beverage purposes manufactured prior to its effective date. But that is not all.

The Eighteenth Amendment is only part of a constitution containing many provisions, and in construing it other provisions of the same instrument, which have any bearing upon the subject, shall also be taken into account. The Eighteenth Amendment gives Congress the power to prohibit the sale of intoxicating liquors for beverage purposes. The Fifth Amendment contains an express limitation upon the power of Congress which forbids it to enact any law which shall deprive any person of his property without due process of law. Did the framers of the Eighteenth Amendment, in giving to Congress the power to prohibit the sale of intoxicating liquors for beverage purposes, intend to repeal the limitation upon the power of Congress contained in the Fifth Amendment? If the power vested in Congress by the Eighteenth Amendment to prohibit the sale of liquor is to be exerted against its sale when manufactured prior to the effective date of the amendment, then does not the Eight-

eenth Amendment to that extent repeal the limitation upon the power of Congress contained in the Fifth Amendment? Repeals by implication are not favored in the law and are never to be presumed unless it is "imperatively required." This Court has held, in Texas & P. R. Co. *vs.* Abilene Cotton Oil Co., 204 U. S., 426, 427, that the repeal of a statute by implication cannot be sustained "unless that result is imperatively required; that is to say, unless it be found that the pre-existing right is so repugnant to the statute that the survival of such right would in effect deprive the subsequent statute of its efficacy; in other words, render its provisions nugatory." We do not believe that the survival of the right to sell the liquor now in bond would have that effect upon the Eighteenth Amendment.

Certainly it will be conceded that if the owners of liquors manufactured prior to the effective date of the Eighteenth Amendment are now denied the right to sell those liquors, then that is a deprivation of property. The destruction of property rights by legislative enactment is a deprivation of property. The right to sell property is property as much so as the right to possess, use, and enjoy it. A legislative enactment which takes away this right is a deprivation of property. This was expressly held by this Court in Buchanan *vs.* Warley, 245 U. S., 60, 74. This Court has always held that liquor is as much the subject of property, within the meaning of the term as used in the Fifth Amendment, as the sugar of Louisiana, the cotton of South Carolina, the hops of Washington, the tobacco of Maryland and Connecticut, the products, natural or manufactured, of any State, and are so "recognized by the laws of Congress, the decisions of courts, and the usage of the commercial world." Lyng *vs.* Michigan, 135 U. S., 161.

When we consider that Congress knew and intended that the established rules of constitutional construction would be applied to the amendment, and that an application of those rules would give the amendment a prospective operation, and that to give the amendment a retroactive effect would not only destroy hundreds of millions of dollars' worth of property, and thereby inflict untold loss upon innocent people, and that such a result would be to violate the spirit, if not the letter, of the Fifth Amendment, the conclusion is irresistible that Congress did not intend that the Eighteenth Amendment should be so construed as to take from the owners of liquor manufactured prior to its effective date the lawful right to sell those liquors.

VII.

The contention we have been making against retroactive construction is in nowise impaired by the existence of the postponement clause of the Eighteenth Amendment. That clause was not inserted in the amendment as a rule of construction or as an aid in construing the amendment. It has performed its office, is now a dead letter, and therefore has no present meaning. It meant nothing in the beginning except that the effective date of the amendment was postponed one year. The specific reasons which impelled Congress to put off the effective date of the amendment can never be known, but whatever they may have been, they now have no effect upon the meaning of the amendment. It is to be construed now as it would have been had its effective date not been postponed.

If the court sustains our contention that the Eighteenth Amendment shall not be construed so as to prohibit the sale

of liquors lawfully manufactured and owned at this effective date, then it follows that Congress has not the power to prohibit such sale and the Volstead Act will not be so construed by the court if it can be given a reasonable construction to the contrary. In our original brief, in Ghio's case, we have undertaken to show that the Volstead Act not only does not prohibit the sale of such liquor, but permits and regulates it. Under this circumstance, we will not reiterate what we have said on this point in the original brief.

We respectfully submit that the decrees in these cases should be reversed and the cause remanded to be tried in accordance with the opinion and views of this Court.

GLENDY B. ARNOLD,
ELLIOTT W. MAJOR,
Attorneys and Counsellors for Appellants.

(5364)

FILED
SEP 13 1921
JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 428.

WILLIAM H. BRYAN, APPELLANT,

vs.

JOSHUA W. MILES, COLLECTOR OF INTERNAL REVENUE OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND, AND RICHARD S. DODSON, FEDERAL PROHIBITION DIRECTOR FOR THE STATE OF MARYLAND.

Appeal from the District Court of the United States for the District of Maryland.

BRIEF FOR APPELLANT.

JULIAN S. JONES,
J. WALLACE BRYAN,
JAMES T. O'NEILL,
GLENDY B. ARNOLD,
ELLIOTT W. MAJOR,
Attorneys and Counselors for Appellant.

(28,383)

ST. LOUIS LAW PRINTING CO., 415 N. Eighth St. Bell, Main 1819.

SUBJECT INDEX.

	Page
Statement of case	1
Assignment of errors	9
Brief of the argument	12
Argument	21
Appendix	45

Alphabetical List of Authorities Cited.

Blackstone, Vol. II, 389	16
Braceville Coal Co. v. People, 147 Ill. 66	16
Beer Co. v. Massachusetts, 97 U. S. 25, 32	16
Brown v. Maryland, 12 Wheat. 419, 447	17
Bardemyer v. Iowa, 18 Wall. 129	16
Chicago & W. I. R. Co. v. Englewood C. R. Co., 115 Ill. 375	16
Eighteenth Amendment, Constitution U. S.	18
Fifth Amendment, Constitution U. S.	15
Foster on Federal Practice, p. 722, Sec. 221	12
Grand Rapids Booming Co. v. Jarvis, 30 Mich. 308, 320	16
Gretch Mfg. Co. v. Schoening, 238 Fed. 780	12
Hoffman Brewing Co. v. McElligott, 259 Fed. 321, 525	12
Ladiga v. Rowland, 11 How. 581, 589	15
L. A. R., Vol. 10, pp. 1543, 1548	13
Leet v. State Bank, 115 Mo. 184	15
License Cases, 46 U. S. 504, 577	16
Lincoln v. Smith, 27 Vt. 328	16
National Prohibition Act, Sec. 3, Title II	17
National Prohibition Act, Sec. 33, Title II	15
National Prohibition Act, Sec. 37, Title II	13
Petri v. Creelman Lbr. Co., 199 U. S. 487, 497	17
Pollard v. Reardon, 65 Fed. 848	12

Preston v. Drew, 33 Me. 558..... 16
Public Resolution No. 64—66th Congress..... 13
Reynolds v. McArthur, 11 Pet. 417, 437..... 15
Scranton v. Wheeler, 179 U. S. 141, 170..... 16
Shreveport v. Cole, 129 U. S. 36..... 15
Slaughter-House Cases, 83 U. S. 36, 127..... 16
Street v. Lincoln Safe Deposit Co., Vol. 41, No. 3, Sup. C. R. 31.....13, 15, 19
Supervisors v. Galbraith, 99 U. S. 214..... 15
Taney v. Bank, 232 U. S. 138..... 17
Tex. P. Ry. v. Abilene Cotton Oil Co., 204 U. S. 426, 427 17
United States Comp. Statute 1916, Sec. 1560..... 12
War Time Prohibition Act, U. S. Comp. Statute, Sup. 1919, Sec. 3115, 11/12f..... 37
Wynehamer v. People, 13 N. Y. 378.....15, 16

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 428.

WILLIAM H. BRYAN, APPELLANT,

vs.

JOSHUA W. MILES, COLLECTOR OF INTERNAL REVENUE OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND, AND RICHARD S. DODSON, FEDERAL PROHIBITION DIRECTOR FOR THE STATE OF MARYLAND.

Appeal from the District Court of the United States for the District of Maryland.

BRIEF FOR APPELLANT.

STATEMENT.

This is an appeal from the order, judgment and decree of the Court entered on the 24th day of June, 1921, in the District Court of the United States for the District of Maryland, sustaining a motion to dismiss complainant's amended bill. The amended bill alleges that complainant is a citizen and resident of

Baltimore County and State of Maryland, and that defendant Joshua W. Miles is a citizen and resident of Somerset County, in said state, and is Collector of the Internal Revenue of the United States for the District of Maryland; and that Richard S. Dodson is a citizen and resident of Talbot County, in said state, and is Federal Prohibition Director for the State of Maryland.

That defendant Joshua W. Miles, as such Collector, is charged by law with the duty of collecting and receiving taxes due the United States on distilled spirits in government bonded warehouses in his district, and upon the payment of taxes due on such distilled spirits by the owners thereof to issue internal revenue stamps showing payment of said taxes, and to release the spirits to the owners; that the government bonded warehouses in said district and the distilled spirits on deposit therein and the keys to said warehouses and the right to ingress and egress from and to the same is in the custody and control of defendant Joshua W. Miles.

That defendant Richard S. Dodson is the duly appointed, qualified and acting Federal Prohibition Director for the State of Maryland, and is the acting agent or assistant of the Commissioner of Internal Revenue of the United States, and as such, under the "National Prohibition Act," is charged with the duty of issuing permits for the delivery, transportation

and possession of distilled spirits to persons lawfully entitled to accept delivery thereof, transport and possess same; and, where such distilled spirits are on deposit in government bonded warehouses, to issue permits for the delivery thereof to the owners and for the transportation of same by such owners from such government bonded warehouses to their respective private dwellings or other places where same may be lawfully kept, upon payment of the federal taxes due thereon to the Collector of Internal Revenue for the district.

That the complainant is the owner of one barrel of distilled spirits, commercially known as "Pikesville Pure Rye Whisky," and became the owner thereof and has owned same ever since the 2nd day of October, 1919; that said spirits are now on deposit in the government bonded warehouse known as Distillery Bonded Warehouse "E" of the United States of Registered Distillery No. 25, located at Pikesville, in Baltimore County, in the State of Maryland, and in the United States Internal Revenue District for the State of Maryland; that the said spirits are contained in a wooden barrel, No. 43892, containing approximately forty taxable gallons, produced by the Pikesville Distillery Company at Registered Distillery No. 25, in Baltimore County, Maryland, in the United States Internal Revenue District for said State, and

that there is due the United States as tax on the said barrel of spirits the sum of $256.00.

That the complainant did, on the 8th day of April, 1921, present to the defendant Richard S. Dodson, Federal Prohibition Director, a verified written application setting forth the qualification of the applicant, and that he desired to obtain delivery and to transport said distilled spirits to his private dwelling, situated in Baltimore County, Maryland, and which is occupied by him as his dwelling only, for the personal consumption of himself and his family residing in said dwelling and of his bona fide guests when entertained therein by him, all of which more fully appears in the said verified application marked "Complainant's Exhibit No. 1," filed with the bill of complaint, and that defendant Dodson wrongfully and without authority of law refused to grant the permit applied for, which refusal of said defendant Dodson is in writing and filed with the bill and marked "Complainant's Exhibit No. 2."

That the complainant before the filing of his bill tendered to the defendant Joshua W. Miles, Collector of Internal Revenue for the District of Maryland, the sum of $256.00 in lawful money of the United States, same being the full amount of the taxes due the United States on said distilled spirits, and demanded of said Miles that he issue to the complainant United States Internal Revenue Stamps showing the

payment of the said tax on said spirits, and demanded that he release said spirits, which said defendant Miles refused to do, which said tender and demand and refusal were in writing and is filed with the bill, marked "Complainant's Exhibit No. 3."

The complainant further alleges in his amended bill that he desires to obtain possession of the said distilled spirits as his private property and to transport the same to his private dwelling situated on the south side of the Court Road, near Green Spring Avenue, in Baltimore County, Maryland, which said dwelling is occupied and used by the complainant as his dwelling only, and to keep the same in said dwelling for the personal use of himself, the members of his family and his bona fide guests when entertained therein; that he does not desire the possession of the said spirits for the purpose of barter or sale or disposing of the same in violation of any law of the United States.

The amended bill further alleges that in refusing to grant the permit for the delivery of said spirits and to accept the tender of taxes thereon and to issue internal revenue stamps therefor, showing payment, the defendants claimed to have acted under the terms and authority of what is commonly called the Volstead Act. But that complainant is

advised and avers that the said Volstead Act contains no provisions which required or authorized the defendants to refuse said permit or to decline to receive payment of said taxes for the reason, among others, that said distilled spirits were purchased by the complainant prior to the effective date of the said Volstead Act and that he purchased said spirits solely for delivery to his private dwelling and solely for the personal use of himself, his family and bona fide guests when entertained therein by him; and further alleges that the removal of the said distilled spirits from the said United States bonded warehouse to his private dwelling for the said purposes specified, on the payment of the tax thereon, is not forbidden by the Eighteenth Amendment or the said Volstead Act. Complainant further alleges that if said Volstead Act is susceptible of a construction authorizing or justifying the action of the defendants, so much of said statute is unconstitutional, void and of no effect, for the reason that it transcends the power of Congress under the Eighteenth Amendment to the Constitution of the United States and deprives the complainant of his property without due process of law and without just compensation, and denies him the equal protection of the laws, contrary to the Fifth Amendment to the Constitution of the United States.

The amended bill of complaint prays for the issuance of a writ of injunction directed to the defendant Richard S. Dodson, Federal Prohibition Director, directing him to grant and issue the permit applied for and enjoining him from preventing or interfering with the removal by the complainant of said distilled spirits from said bonded warehouse to the complainant's private dwelling for lawful use and consumption; and that the Court issue its writ of injunction directed to the defendant Joshua W. Miles, Collector aforesaid, restraining and strictly enjoining him, upon payment by the complainant of all taxes lawfully due the United States on or in respect to the said distilled spirits, from longer refusing to issue revenue stamps showing payment of such taxes or from refusing to release said spirits to the complainant, and from longer denying to complainant access to said spirits in said bonded warehouse or preventing him from taking and having possession of his distilled spirits therein for the purpose of removing same to complainant's private dwelling for lawful use and consumption therein as set out in the amended bill of complaint; and from preventing or interfering with the removal by complainant of said spirits from said bonded warehouse, for the aforesaid purposes, and from longer detaining and withholding from the complainant the lawful possession of his said distilled spirits; and, also,

directing and requiring said defendants, upon payment or due tender of said taxes, to deliver said distilled spirits to the complainant and to permit him to take possession of and remove the same from said bonded warehouse to the complainant's said private dwelling for lawful consumption therein as set forth in the amended bill; and that the complainant have such other and further relief as his case may require.

The defendants filed a motion to dismiss the amended bill of complaint. The facts and allegations contained in the amended bill are admitted, therefore, to be true by the motion to dismiss. The Court below sustained the motion and dismissed the amended bill of complaint. A constitutional question being involved, complainant is here by direct appeal.

ASSIGNMENT OF ERRORS.

The Appellant makes the following assignment and specification of errors:

I.

The Court erred in sustaining the defendants' motion to dismiss said amended bill and in entering a decree in dismissing said bill.

II.

Said decree deprives the complainant of the protection of the Fifth Amendment to the Constitution of the United States, in that it sanctions the taking of the complainant's private property without due process of law, and the taking of the complainant's private property for a public use without any compensation.

III.

Said decree is neither supported nor sustained by the Eighteenth Amendment to the Constitution of the United States.

IV.

The Court erred in holding that the National Prohibition Act forbids the removal by the complainant of the spirits mentioned in the amended bill of complaint from the bonded warehouse to his residence for the lawful consumption of himself, his family and his bona fide guests.

V.

The Court erred in holding that it is not the duty of the defendant, Joshua W. Miles, as Collector of Internal Revenue, to issue stamps on payment of the federal taxes on said distilled spirits, and to issue a permit for the removal thereof by the complainant from the bonded warehouse to his bona fide residence for the purpose specified in the amended bill of complaint.

VI.

The Court erred in holding that it was not the duty of the defendant, Joshua W. Miles, as Collector of Internal Revenue, to release unto the complainant the possession of the distilled spirits mentioned in the amended bill of complaint and now in the bonded warehouse as therein stated.

VII.

The Court erred in holding that it was not the duty of the defendant, Richard S. Dodson, as Federal Prohibition Director for the State of Maryland, to issue to the complainant a permit for the removal by him of the distilled spirits mentioned in the amended bill of complaint from the bonded warehouse to the complainant's bona fide residence for the purposes specified in said amended bill.

VIII.

Under the allegations of the complainant's amended bill, he is entitled to a decree against the defendants compelling and directing the defendants to release to the complainant the spirits described in said amended bill.

BRIEF OF THE ARGUMENT.

I.

The motion to dismiss the amended bill of complaint admits all the allegation contained therein. A constitutional question being involved, the cause comes to the Supreme Court of the United States on direct appeal.

Street v. Lincoln Safe Deposit Co., Vol. 41, No. 3, Sup. Court Rep., p. 31.

II.

The complainant has no remedy at law and by his bill has pursued the proper legal course and the Court is possessed of jurisdiction to hear and determine the questions involved and grant the relief for which complainant prays.

United States Compiled Statutes 1916, Sec. 1560;

National Prohibition Act, Title II, Sections 5 and 6.

Foster on Federal Practice, p. 722, Sec. 221;

Hoffman Brewing Co. v. McElligott, 259 Fed. 321, 525.

Pollard v. Reardon, 65 Fed. 848.

Gretch Manufacturing Co. v. Schoening, 238 Fed. 780.

III.

The National Prohibition Act authorizes the transportation of distilled spirits lawfully acquired before the effective date of the Act from a government bonded warehouse to the private dwelling of the owner for the uses permitted in Section 33, Title II, of said Act.

National Prohibition Act, Title II, Sec. 37;
Street v. Lincoln Safe Deposit Co., Vol. 41, No. 3, Sup. Court Rep., p. 31;
Public Resolution No. 64, 66th Congress, approved by President March 3, 1921.

IV.

The delivery of the barrel of distilled spirits to complainant and its transportation from the government bonded warehouse to his private dwelling for lawful consumption therein, as authorized by Section 33, Title II, of the National Prohibition Act, does not violate any provision of said Act. The access to, delivery and transportation of said spirits to complainant's private dwelling is not a "delivery" and "transportation" within the meaning of Section 3, Title II, of the Act.

Street v. Lincoln Safe Deposit Co., Vol. 41, No. 3, Sup. Court Rep., p. 31;
National Prohibition Act, Title II, Secs. 33, 37 and Proviso in Sec. 3;
10 A. L. R., pp. 1543, 1548.

V.

Congress, in passing the National Prohibition Act, was concerned about and dealt with the prevention of the manufacture and sale of intoxicating liquors for beverage purposes in the **future.** It was not concerned about the **consumption** of distilled spirits as a **beverage,** which were manufactured and owned **prior** to the effective date of the Eighteenth Amendment to the Constitution and the effective date of the National Prohibition **Act.**

Neither the Amendment nor the Act prevents the **use** for beverage purposes of distilled spirits manufactured and owned **prior** to their effective dates. In fact, Section 33, Title II, of the Act specifically authorizes the **use** of such spirits for **beverage purposes.** Anything else would have been confiscation of such lawfully acquired spirits. Mr. Justice McReynolds in his concurring opinion in the Street case, in discussing the National Prohibition Act and the power of Congress to prevent the consumption by the owner of distilled spirits lawfully acquired, said that to interfere with such use or consumption would be virtual confiscation and that "The Eighteenth Amendment gave no such power to Congress."

Street v. Lincoln Safe Deposit Co., Vol. 41, No. 3, Sup. Court Rep., p. 31.

VI.

The Eighteenth Amendment is expressly prospective in its operation and does not prohibit the use or transportation, for beverage purposes, of liquor lawfully acquired before its adoption.

Street v. Lincoln Safe Deposit Co., Vol. 41, No. 3, Sup. Court Rep., p. 31;
Reynolds v. McArthur, 11 Pet. 417, 437;
Ladiga v. Rowland, 11 Howard 581, 589;
Supervisors v. Galbraith, 99 U. S. 214;
Shreveport v. Cole, 129 U. S. 36;
Leet v. State Bank, 115 Mo. 184;
National Prohibition Act, Sections 33 and 37, Title II.

VII.

If the National Prohibition Act denies to complainant possession of his distilled spirits, and the right to transport same to his private dwelling, then it is in conflict with the Fifth Amendment to the Constitution of the United States, and to that extent is void.

Fifth Amendment, Constitution of the United States;
Wynehamer v. People, 13 N. Y. 378;
Street v. Lincoln Safe Deposit Co., Vol. 41, No. 3, Sup. Court Rep. 31.

VIII.

Intoxicating liquor, manufactured and lawfully acquired, prior to the adoption of the Eighteenth Amendment, is property, and the right to use it, possess it and enjoy it is property, within the meaning of that term as used in the Fifth Amendment.

License Cases, 46 U. S. 504, 577;
Slaughter House Cases, 83 U. S. 36, 127;
Wynehamer v. People, 13 N. Y. 378, 396;
Preston v. Drew, 33 Me. 558;
Lincoln v. Smith, 27 Vt. 328;
Scranton v. Wheeler, 179 U. S. 141, 170;
Braceville Coal Co. v. People, 147 Ill. 66;
Beer Co. v. Massachusetts, 97 U. S. 25, 32;
Bardemyer v. Iowa, 18 Wall. 129;
Street v. Safe Deposit Co., Vol. XLI, No. 3, Sup. Court Rep. 31.

IX.

The right of possession is one of the chief incidents of property.

Blackstone, Vol. II, 389;
Wynehamer v. People, 13 N. Y., l. c. 433;
Chicago & W. I. R. Co. v. Englewood C. R. Co., 115 Ill. 375, 385;
Grand Rapids Booming Co. v. Jarvis, 30 Mich. 308, 320.

X.

The Eighteenth Amendment does not repeal the Fifth Amendment.

Petri v. Creelman Lbr. Co., 199 U. S. 487, 497;
Tex. P. Ry. v. Abilene Cotton Oil Co., 204 U. S. 426, 437;
Street v. Lincoln Safe Deposit Co., Vol. 41, No. 3, Sup. C. R. 31;
Chicago & W. I. R. Co. v. Englewood C. R. Co., 115 Ill. 375, 385;
Grand Rapids Booming Co. v. Jarvis, 30 Mich. 308, 320.

XI.

Warehouse receipts for distilled spirits in bond were, prior to the passage of the National Prohibition Act, and are now by the provisions contained in the proviso in Section 3, Title II of the Act, negotiable instruments, and the title to the spirits called for by the receipt passes by the sale and delivery of the receipt. The proviso contained in said section, authorizing the sale and purchase of receipts for spirits manufactured and deposited in bond prior to the effective date of the act, by necessary implication authorizes the delivery and transportation of the property to the private dwelling of the owner for lawful consumption therein.

Tany v. Bank, 232 U. S. 138, 167 Fed. 689, 700;
Brown v. Maryland, 12 Wheat 419, 447.

XII.

The right of the complainant to the possession and transportation of his distilled spirits to his private dwelling, under the facts in this case, is authorized under the provisions of the National Prohibition Act. If it is not, then the act, to the extent of its denial of these rights, is in violation of the Fifth and Eighteenth Amendments.

National Prohibition Act, Sections 3, 33 and 37, Title II;
Street v. Lincoln Safe Deposit Co., Vol. 41, No. 3, Sup. Court Rep., p. 31.

XIII.

The Eighteenth Amendment to the Constitution is prospective in its operation and was designed to eventually end the **use** of distilled spirits as a **beverage**. Spirits manufactured and owned prior to its effective date can be used for beverage purposes in the private dwelling of the owner and can be possessed, delivered and transported to the private dwelling for such purpose. When such spirits are exhausted then the **use** as a beverage will be at an end. Congress has no power under the Eighteenth Amendment to prevent such use, and any act of Congress prohibiting such use of such liquors would be unconstitutional.

The proviso in Section 3, Title II of the National Prohibition Act authorizes the purchase and sale of such receipts; section 37 authorizes the delivery and transportation from bond to the private dwelling of the owner and section 33 authorizes the consumption of the spirits by the owner, his family and bona fide guests when entertained by him therein. Such delivery and transportation does not violate section 3 of the act. Warehouse receipts for such spirits can be bought and sold as long as the spirits are in bond.

Street v. Lincoln Safe Deposit Co., Vol. 41, No. 3, Sup. Court Rep., p. 31.

XIV.

Complainant is compelled under the law to pay monthly storage charges without limit as to duration. There is a constant "outage" by seepage and evaporation. The refusal of the defendants to deliver to him his spirits, upon payment of the taxes due the Government, and to permit him to transport same to his private dwelling for lawful consumption therein, forces complainant to pay storage charges without limit as to duration and thereby eventually consume the value of his property and by "outage" his spirits will be entirely lost or destroyed.

XV.

Neither the National Prohibition Act nor any regulation of the Bureau of Internal Revenue require a permit to transport spirits manufactured and owned before the effective date of the act from bond to the owner's private dwelling for the beverage uses therein provided in Section 33 of the Act. The permit required by Section 6 of the Act is where the liquor is to be transported for medicinal and no other purpose, and which liquor may be sold upon prescription. The provision being penal, it must be strictly construed. The bureau has administrative power to make regulations for the transportation from bond to the private dwelling for beverage uses therein, but until it does so, no permit is required. There was no permit in the Street case. This point is argued because of the motion to argue and submit the instant case with cases in which no permits were asked or applied for. We removed the question from this case by applying for a permit.

Street v. Lincoln Safe Deposit Co., Vol. 41, Sup. Court Rep., p. 31.

ARGUMENT.

I.

Under the decision in the case of Street v. Lincoln Safe Deposit Company the appellant is entitled to the relief for which he prays. "Delivery" and "transportation" of spirits manufactured and owned before the effective date of the National Prohibition Act, from the Government bonded warehouse to the private dwelling of the owner for lawful consumption therein is not a "delivery" and "transportation" within the meaning of Section 3 of the Act.

A motion has been filed to advance this cause and argue and submit same jointly with the cases of Corneli v. Moore, No. 174, and Ghio v. Moore, No. 175, on Monday, October 10th, 1921. The principal questions involved in the three cases are practically the same, and on the theory the motion will be sustained, we will not, in this brief, cover the arguments in the briefs in those cases any more than is necessary to present the instant case.

It is respectfully submitted that the appellant is entitled to the relief for which he prays under the decision of this Honorable Court in the case of Street v. Lincoln Safe Deposit Company, decided November 8, 1920.

In that case it was held that a person who had lawfully purchased distilled spirits for personal con-

sumption, and had stored the same in a warehouse belonging to a corporation authorized to engage in the warehousing business, was entitled to obtain the same from the warehouse for use as a beverage, notwithstanding the Eighteenth Amendment and the National Prohibition Act. In the majority opinion it was held that the National Prohibition Act, when properly construed, did not forbid the delivery of the spirits by the Warehouse Company to the complainant for the purposes specified, and that the removal of the spirits by the complainant from the warehouse to his private dwelling was not "transportation" within the meaning of either the Eighteenth Amendment or Section 3 of the Act. Mr. Justice McReynolds concurred in the judgment of the Court on the ground that the act did intend to forbid such removal, but that to enforce it as thus construed would result in virtual confiscation of lawfully acquired liquors, which was beyond the power granted to Congress by the Eighteenth Amendment.

The present case is identical in principle with the Street case, with the exception only that the spirits in question are on deposit, not in a private warehouse, but in a Government Bonded Warehouse. The appellant contends, however, that there is nothing in this circumstance to justify any different application of the principles laid down in the Street case, but that on the contrary, these principles are even more

clearly applicable to spirits in a Government Bonded Warehouse than to spirits in a private warehouse. That this is so becomes apparent from an analysis of the reasoning of the Court in the Street case in its relation to the facts in the present case. This analysis and comparison will accordingly be made in detail.

At the outset, the mode in which the Court stated the question decided by it in the Street case is significant. The Court's language is as follows:

> "May a warehousing corporation lawfully permit to be stored in its warehouse, after the effective date of the Volstead Act, liquors admitted to have been lawfully acquired before that date, and which are so stored, solely and in good faith for the purpose of preserving and protecting them until they shall be consumed by the owner and his family, or bona fide guests?"

No distinction is here suggested between a private warehouse and a Government Bonded Warehouse. There is no such distinction that is pertinent to the present controversy, for a Government Bonded Warehouse is simply a private warehouse over which the Government exercises a certain supervision, and in which it has certain rights, for the purpose of collecting revenue payable in respect of the spirits on storage. The other circumstances referred to by the

Court in the above passage are identical with those in the present case.

The general attitude of the Supreme Court toward the general question involved in the present case is clearly stated by Mr. Justice Clarke who delivered the opinion of the Court in the following passage:

> "Since here, as always, the purpose of Congress in enacting a law is of importance in determining the meaning of it, it is noteworthy that title 11 of the Volstead Act was passed under the grant of power to enforce the first section of the Eighteenth Amendment to the Constitution of the United States, which prohibits the manufacture, sale, and transportation of intoxicating liquors for beverage purposes, **but does not indicate any purpose to confiscate liquors lawfully owned at the time the Amendment should become effective, and which the owner intended to use in a lawful manner.**"

The underscored passage is the very crux of the case. The Court says distinctly that the National Prohibition Act indicates no purpose to confiscate liquors "lawfully owned" at the time the Eighteenth Amendment should become effective, and which the owner intended to use in a "lawful manner." No mention is made here as to the location of the "lawfully owned" liquor intended for use in a "lawful manner." Here again, the appellant's position brings the case squarely within the application of the above

language, so that any distinction based on the place of storage, assuming that both places are lawful, would have no sound basis in principle.

One of the major arguments pressed upon the Supreme Court in the Street case was that "possession" of the spirits by the warehouse company was forbidden by the National Prohibition Act. The Government based this contention upon the provisions of sections 25 and 21 of the Act. This Honorable Court, however, disposed of the argument based on section 25 by pointing out that the possession thereby forbidden was of liquor intended "for use in violating this title," whereas the consumption of the spirits by the complainant in his own home is not in violation of the title. It disposed of the contention based on section 21 by saying that the word "kept" plainly means "kept for sale or barter, or other commercial purpose," the inapplicability of which to the case was apparent.

All this is obviously pertinent to the instant case with this important difference; that no possible question could arise as to whether the keeping of the complainant's spirits in the **Government Bonded Warehouse** is an unlawful possession, whereas, there was room for possible doubt with reference to the custody of liquor in a private warehouse. In this respect, therefore, the present case is even stronger than the Street case, for we start with the unquestionable fact

that the present possession of the complainant's spirits is entirely lawful, and that the purpose to which the complainant intends to put them is equally lawful, so that the only question left for consideration is, as to whether permitting the plaintiff to have access to the spirits, and to remove them to his private dwelling for an admittedly lawful purpose is a "delivery" and "transportation" within the meaning and terms of Section 3 of the National Prohibition Act.

On these points it is submitted that the Street case is absolutely conclusive. The prohibition against "delivery" of intoxicating liquors is directed against persons not "authorized" by the Act to "possess" the same, and the Court held that the relation of the storage company to the distilled spirits would not constitute an unlawful possession of them, nor would its act in permitting the owner to have access to the liquors to take them to his dwelling for lawful consumption and use therein be a "delivery" of them within the meaning of said third section of the Act.

The above contentions being disposed of, there was left for decision whether the removal of the liquors from the warehouse to the home of the complainant was such "transportation" as was prohibited by Section 3 of the Act. That this question requires a negative answer was held to be "too apparent to justify detailed consideration of the many provisions of

the act inconsistent with a construction which would render such removal unlawful."

Among other things, the Court referred to the regulations of the Bureau of Internal Revenue authorizing permits for the transportation of liquors from one permanent residence of an owner to another, although no such transfer is in terms provided for by the Act. The Court further points out that there is like administrative power under the Act to so regulate the transfer of such stored liquors from a warehouse to the dwelling of the owner as to prevent their being used to evade the prohibitions of the Act, or to substantially interfere with its effective enforcement.

All of these considerations are obviously applicable to the present case. The removal of spirits from a Government Bonded Warehouse to the complainant's private dwelling for lawful use is no more a "transportation" of them than a like removal from a private warehouse; and there is the same administrative power on the part of the Bureau of Internal Revenue to make protective regulations in the one case as in the other.

Finally, the general attitude of the Court toward the removal and lawful consumption of spirits manufactured and owned before the effective date of the Eighteenth Amendment and the National Prohibition Act is summed up in the conclusion of the opinion,

which is so pertinent to the situation presented in the instant case that we quote same in full.

> "It may be that the custody of liquors by a warehouse company was thus not declared to be unlawful because the writers of the act did not have such a case in mind; but it was more **probably because Congress would not consent to allow lawful possession and use of liquors in dwellings having storage facilities for them, while denying the only possible means of preserving and protecting such liquors to persons with less commodious homes.** The Congress was concerned with the great problem of preventing the manufacture and sale of intoxicating liquors for beverage purposes **in the future,** and it seems to have given but slight attention to the **consumption** of such relatively small amounts of such liquors as might be in existence in private ownership, and intended for consumption by the owner, his family or his guests, when the Amendment and the act should take effect.
>
> "An intention to confiscate private property, even in intoxicating liquors, will not be raised by inference and construction from provisions of law which have ample field for their operation in effecting a purpose clearly indicated and declared."

There is not a single principle decided or consideration referred to in the Street case which loses its pertinency to the present case on account of the difference in the character of the depository of the

spirits. On the contrary, the complete analogy in all substantial particulars between the two cases is so striking that further comment cannot make it clearer.

The majority opinion in the Street case is based on the holding that the National Prohibition Act, when properly construed, does not prohibit the delivery and transportation of the spirits under the circumstances shown. Mr. Justice McReynolds was of the opinion that the Act did forbid the transportation in question, but said that, "to enforce it as thus construed would result in virtual confiscation of lawfully acquired liquors by preventing or unduly interfering with their consumption by the owner. The Eighteenth Amendment gave no such power to Congress. Manufacture, sale and transportation are the things prohibited—not personal use." Mr. Justice McReynolds' view is in nowise inconsistent with the majority opinion which construed the statute as not reaching the acts in question, and, of course, did not attempt to decide whether the Act would have been constitutional and valid if construed otherwise.

It is submitted that if the National Prohibition Act was susceptible of a construction which would prevent the removal by this complainant of his lawfully acquired spirits from the government bonded warehouse to his private dwelling, for his personal consumption therein, as expressly authorized by Section 33 of the Act, then such part of the Act would be un-

constitutional because it would confiscate complainant's property in violation of the Fifth Amendment to the Constitution.

Congress has no power to regulate the use of intoxicating liquors except as authorized by the Eighteenth Amendment. The Eighteenth Amendment prohibits only the manufacture, transportation and sale of intoxicating liquor. The Street case holds that the removal of intoxicating liquor, acquired before the Eighteenth Amendment became effective, from a lawful place of deposit to the owner's private dwelling for personal consumption is not such transportation as is forbidden by the Constitution. It seems inevitably to follow, therefore, that in attempting to forbid such removal, Congress would clearly exceed the power of enforcement conferred on it by the Eighteenth Amendment. It is well settled that a construction of any statute is to be avoided which would render doubtful the constitutionality of the statute.

II.

Neither the National Prohibition Act nor any regulation of the Bureau of Internal Revenue require a permit to remove distilled spirits manufactured and owned before the effective date of the Act, from a government bonded warehouse to the owner's private residence for lawful consumption therein. The bureau has administrative power to make a regulation requiring one, but did not do so, and the Court will take notice of this fact. The permit required by the Act (section 6) is where same is transported solely for medicinal purposes and for sale by prescription. We make this argument here solely because of our motion to advance and argue and submit this case jointly with the Corneli and Ghio cases. In the instant case we applied for a permit, so as to remove that question from this case.

The National Prohibition Act does not require a permit to transport distilled spirits from a government bonded warehouse to the private dwelling of the owner for lawful consumption therein, of spirits manufactured and owned prior to the effective date of the Act. While the Bureau of Internal Revenue has administrative power to regulate such transfers and transportation of such spirits for beverage consumption in the dwelling, yet it has refused to make

any rules or regulation and there were no regulations or rules requiring permits for delivery and transportation of such spirits for such purpose and to such a place. The Court will take notice there was no bureau regulation requiring a permit for such a delivery and transportation. There was no permit in the Street case.

Permits required under the provisions of Section 6, Title II, of National Prohibition Act, are when the delivery and transportation are for **medicinal** purposes and where same is for **sale** under the law and the bureau regulations. The provisions of said section have no application whatever to the delivery and transportation of the spirits in question.

Neither the National Prohibition Act nor the rules and regulations of the Bureau of Internal Revenue require a permit before spirits manufactured and owned prior to the effective date of the Act can be delivered to the owner and transferred or transported by him from the government bonded warehouse to his private dwelling for lawful consumption therein as a beverage, and as provided and authorized by Section 33 of said Act.

Section 6 of said Act is penal and must be strictly construed. Where the liquor is to be delivered, transported and used for the medicinal purposes specifically named and set forth therein, then a **permit** is required, but that section cannot, by any stretch or

liberal construction, include delivery and transportation from bond to the private dwelling for lawful beverage use therein by the owner of spirits manufactured and owned prior to the effective date of the Act.

The first case of Corneli v. Moore, 267 Fed. 456, in the District Court for the Eastern District of Missouri, now case No. 174 on the docket of this Honorable Court, and with which we have asked by proper motion that the instant case be jointly argued and submitted, was decided by Faris, District Judge, on September 21, 1920. This was prior to the Street case, and inasmuch as the District Court s decision is based on the ground that the removal of the liquor from a warehouse to the owner's dwelling is such "transportation" as is forbidden by the Eighteenth Amendment and the National Prohibition Act, it is clearly overruled by the Street case. The commentator in 10 A. L. R. 1553 says:

> "That the possession and transportation under the circumstances existing in the reported (Street) case are not illegal is now finally decided by that case. The decision in **Corneli v. Moore** (1920), 267 Fed. 456, to the effect that the provision of the Volstead Act against "transporting" intoxicating liquor necessarily prevents the owner from moving the whisky owned by him from a bonded warehouse in which it has been stored to his residence, for the purpose of there

consuming it for beverage purposes, seems to be contrary to the decision in the reported (Street) case. There does not seem to be sufficient difference between the cases to warrant a different decision."

The second case of Corneli v. Moore, 268 Fed. 993, was decided by the same court on December 11, 1920, which was after the decision in the Street case. The principal ground for the decision, however, was that the War-Time Prohibition Act (40 St. at Large, p. 1046), which was then in force, specifically forbade the removal of spirits in bond. The Court further stated, however, that under Section 6, Title 2, of the National Prohibition Act, taxes may be paid, and revenue stamps may be affixed, only by persons holding permits for transportation issued in accordance with that section, and pointed out that the "plaintiff neither possesses a permit, nor does he plead any facts in relation hereto." No permit, however, is required for a removal such as was desired by Corneli either by the Prohibition Act or by any bureau regulation. Of this there can be no question or doubt.

In the present case, however, the complainant specifically plead he had applied for such a permit, and that the Prohibition Director had refused to issue the same. He has attempted to comply with whatever, if any, duty or obligation rested upon him to obtain such a permit. Thus he has avoided this contention

raised in the Corneli case, and we present this argument here solely because, under our motion in this case, it may be jointly argued and submitted with the Corneli and Ghio cases, in each of which no application was made for a permit, and the attorneys in those cases are also attorneys in this case.

Furthermore, it is submitted that Section 6, Title 2, of the National Prohibition Act, has no bearing upon the present situation. That section is intended to regulate **medicinal liquors**, and requires permits for the transportation of spirits in connection with their manufacture and sale and consumption for medicinal purposes. No such use is contemplated of the liquor involved in the Corneli case or the Ghio case or the present case, so that the same does not fall within the purview of Section 6, or any other section, of the National Prohibition Act, other than section 33, which specifically permits the possession and consumption of liquors in a private dwelling, provided such liquor is for use only for the personal consumption of the owner thereof, and his family residing in such dwelling, and of his bona fide guests when entertained by him therein. The right to remove such liquor from the place where it is lawfully deposited to the dwelling of the owner is necessary for the enjoyment by him of the right of personal consumption in his private dwelling, as specifically authorized by Section 33 of the Act. No permit is required by the statute for such removal, and it is to be noted that the Supreme

Court, in the Street case, did not consider that the absence of such permit would affect the right of the owner to possess and remove the liquor stored in the warehouse. Furthermore, if Congress is not authorized to prohibit the removal of liquor from a lawful place of deposit to the owner's dwelling, it cannot indirectly accomplish the same result with the consequent confiscation of the complainant's property, by the oblique method of requiring permits for such removal, which permits the prohibition officials are directed to refuse. In other words, if he has a right to remove the spirits to his home from the Government Bonded Warehouse, this right cannot be nullified by the simple expedient of withholding a permit if one is required for such removal.

III.

Warehouse receipts for distilled spirits in bond are and were on October 2nd, 1919, negotiable instruments, and title to the spirits passed with the sale and delivery of the receipts. The War Time Prohibition Act did not prohibit sales of such receipts. The War Time Prohibition Act was terminated by the joint resolution passed by Congress and approved by the President March 3rd, 1921, and know as "Public Resolution No. 64—66th Congress."

Warehouse receipts for distilled spirits in bond were, prior to the passage of the National Prohibi-

tion Act, and are now negotiable instruments, and title to the spirits called for in the receipt passes by the sale and delivery of the receipt (Taney v. Bank, 232 U. S. 138, 167 Fed. 689, 700; Brown v. Maryland, 12 Wheat, 419, 447). The War Time Prohibition Act did not destroy the negotiability of warehouse receipts nor affect the right to purchase and sell same.

The War Time Prohibition Act was passed for the alleged purpose of "conserving the man power of the nation, and to increase efficiency in the production of arms, munition, ships, food and clothing for the army and navy. * * *" The statute then provided: "That after June 30, 1919, and until the conclusion of the present war and thereafter until the termination of demobilization * * * no distilled spirits held in bond shall be removed therefrom for beverage purposes" (Comp. St. Ann. Supp. 1919, 3115 11/12f). Obviously this statute was not intended to apply to the purchase during the period in question of liquor in a bonded warehouse, with a view of withdrawing the same after the termination of the period of war time prohibition. Such purchase could have no harmful effect upon the man power of the nation or upon its efficiency in the production of raw material. The language of the statute clearly indicates that it was the intention of the statute that after the war was over, that all persons

who had liquor in a bonded warehouse could remove the same for beverage purposes; and in construing this statute it must be remembered that this statute was not passed with reference to the National Prohibition Act, but it was supposed when this statute was passed that there would be a period between the termination of this statute and the beginning of the National Prohibition Act. Indeed, the National Prohibition Act was not passed until the following October, and could not take effect until the 20th of January, 1920. Furthermore, the statute simply imposed penalties upon the sale of liquor, but did not prevent the passage of title under such sale, nor provide for the confiscation of liquor so sold. Nevertheless, such confiscation would now result if the complainant was denied the right to the lawful use of spirits after the war time ban has been lifted.

It is no answer to this contention to say that the appellant can sell his barrel of distilled spirits for medicinal purposes, and therefore the value of his property will not be confiscated. The prevention of his use of the distilled spirits for the very purposes for which he purchased it, namely, as a beverage for himself, his family and his bona fide guests, while being entertained at his house, is as much a confiscation as depriving him of the money value of the same. When he purchased this barrel of distilled spirits in bond he did not purchase it

to make a profit out of it, or for its present or future market value. He purchased it for use as a beverage; to deprive him of that use is clearly a confiscation of the same.

It is a matter of common knowledge that the only possibly way to acquire title to distilled spirits in a Government Bonded Warehouse is through the purchase of a certificate therefor, and when that certificate is purchased the title of the owner thereof in the distilled spirits is absolutely perfect, subject, however, to the Government tax, the storage charges and the insurance charges. There is no other way to acquire the original title at any time to distilled spirits, from the time same are distilled up to the time the spirits are taken out of a Government Bonded Warehouse.

As a matter of fact, as soon as a distiller has distilled the spirits it is put in barrels, which are numbered, and which are registered at the office of the Collector of Internal Revenue, and copies of the registration are entered upon the books of the distiller and the books of the Government. When the distiller sells to a customer he issues to the customer a certificate for the spirits purchased, and before the customer can take same out of the Government Bonded Warehouse he is, under the law, compelled to pay the Government tax and receive an order on the distiller to withdraw the same, and have the Govern-

ment officials place upon the barrel the canceled Government stamps, and he must also surrender the warehouse certificate for cancellation before withdrawal.

The War Time Prohibition Act was terminated and repealed by Public Resolution, No. 64-66 Congress (H. J. Res. 382). This was a joint resolution passed by Congress and was signed and approved by the President on March 3rd, 1921, a copy of which we print in the appendix to this brief.

RESUME.

There is no question but what complainant's liquor is property and the right to use, possess and enjoy same is property within the meaning of that term as used in the Fifth Amendment to the Constitution of the United States. If the National Prohibition Act denies to complainant the right to transport same to his private dwelling for lawful consumption therein, then the act to that extent is void. The right of possession is one of the chief incidents of property. It is clear that the delivery and transportation by complainant of his distilled spirits from bond to his private dwelling for lawful consumption therein as authorized by Section 33, Title II of the National Prohibition Act is not a "delivery" and "transportation" within the meaning of the third section of that act.

Congress in passing the National Prohibition Act was concerned about preventing the manufacture, sale and transportation of distilled spirits for beverage purposes in the future and was not concerned about the consumption of distilled spirits as a beverage which were manufactured and owned prior to the effective date of the Eighteenth Amendment and the effective date of the National Prohibition Act. Neither the Amendment nor the Act prevents the use for beverage purposes of spirits manufactured and owned prior to their effective dates. In fact, Section 33, Title II of the Act specifically authorizes the use of such spirits for beverage purposes in the private dwelling of the owner. Anything else would have been confiscation of such lawfully acquired property. The Eighteenth Amendment gave no power to Congress to prevent the use for beverage purposes of spirits manufactured and owned prior to its effective date, and besides this the Amendment is expressly prospective in its operation.

Congress in framing the Amendment was silent about its legislative power to prohibit the use for beverage purposes after the Amendment became effective of spirits manufactured and owned before its adoption. Had it inserted the word "use" in Section 1 of the Amendment, then the consumption of spirits as a beverage would have applied to all liquors. This, however, would have been confiscation without com-

pensation and would not have been "due process." Congress framed this Amendment and has construed its own work. It has not and could not under its powers contained in the Amendment prohibit the use or consumption of spirits as a beverage, manufactured and owned prior to its effective date. This question is discussed at length in our brief in the Ghio case, No. 175 of this docket.

The National Prohibition Act authorizes the transportation of distilled spirits lawfully acquired before its effective date from the government bonded warehouse to the private dwelling of the owner for beverage consumption therein by himself, the members of his family and his bona fide guests when entertained by him therein. Section 37 of Title II of the Act reads as follows:

> "Nothing herein shall prevent the storage in United States bonded warehouses of all liquor manufactured prior to the taking effect of this Act, or prevent the transportation of such liquor to such warehouses * * * and permits may be issued therefor."

There is no limitation placed on the purpose for which liquor manufactured prior to the taking effect of the Act may be transported to and stored in Government Bonded Warehouses, consequently it includes liquor for beverage as well as non-beverage purposes. The only limitation imposed is, that the spirits must have been manufactured prior to the taking

effect of the Act, and its use as a beverage is immaterial and it is also immaterial whether it is to be transported from a private dwelling or other place of lawful storage or to be removed from one bonded warehouse to another. If it can be transported under the Act to the Government Bonded Warehouse, of course, a like power is implied to re-transport same when desired to the private dwelling or any other place where the same may be lawfully stored. Congress in passing this section in the Act was not attempting to practice a deceit or to mislead owners to part with the possession of their distilled spirits to the end they might not repossess them. This section has been exhaustively discussed in the Corneli and Ohio cases, No. 174 and No. 175 of this docket, and we will not repeat that argument here.

Distilled spirits may be lawfully kept or deposited in Government Bonded Warehouses, private warehouses and dwellings, outside of these places where the same may be kept for lawful sale under the Act. There is but one place, however, where distilled spirits may be used and consumed as a beverage, and that place is the private dwelling of the owner.

After the consumption of the spirits manufactured prior to the effective date of the Eighteenth Amendment, then the use of distilled spirits, as a beverage, will be at an end. This is true because the Eighteenth Amendment conferred no power on Congress to prevent the consumption of such spirits as a bev-

erage, and any act of Congress preventing such use of such spirits would be invalid because violative of the Fifth Amendment to the Constitution.

Warehouse receipts for distilled spirits in bond were, prior to the passage of the National Prohibition Act, negotiable instruments, and now by the provisions contained in the Proviso in Section 3, Title II of the Act they are still negotiable instruments and title to the spirits called for by the receipt passes by the sale and delivery of the receipt. By authorizing the sale of the receipt by necessary implication, it authorizes the delivery and transportation of the property to the private dwelling of the owner for lawful consumption.

For the reasons herein expressed, we respectfully ask that the order, judgment and decree below be reversed and the cause remanded with directions to overrule the motion to dismiss and to grant the relief prayed for by appellant in his amended bill, and for any and all other orders and directions which this Honorable Court may deem necessary.

Respectfully submitted,

JULIAN S. JONES,
J. WALLACE BRYAN,
JAMES T. O'NEILL,
GLENDY B. ARNOLD,
ELLIOTT W. MAJOR,
Attorneys and Counselors for Appellant.

APPENDIX.

[Public Resolution No. 64—66th Congress.]
[H. J. Res. 382.]

Joint Resolution Declaring that certain Acts of Congress, joint resolutions, and proclamations shall be construed as if the war had ended and the present or existing emergency expired.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in the interpretation of any provision relating to the duration or date of the termination of the present war or of the present or existing emergency, meaning thereby the war between the Imperial German Government and the Imperial and Royal Austro-Hungarian Government and the Government and people of the United States, in any Acts of Congress, joint resolutions, or proclamations of the President containing provisions contingent upon the duration or the date of the termination of such war or of such present or existing emergency, the date when this resolution becomes effective shall be construed and treated as the date of the termination of the war or of the present or existing emergency, notwithstanding any provision in any Act of Congress or joint resolution providing any other mode of determining the date of such termination. And any Act of Congress, or any provision of any such Act,

that by its terms is in force only during the existence of a state of war, or during such state of war and a limited period of time thereafter, shall be construed and administered as if such war between the Governments and people aforesaid terminated on the date when this resolution becomes effective, any provision of such law to the contrary notstanding; excepting, however, from the operation and effect of this resolution the following Acts and proclamations, to wit: Title 2 of the Act entitled "The Food Control and District of Columbia Rents Act," approved October 22, 1919 (Forty-first Statutes, page 297), the Act known as the Trading with the Enemy Act, approved October 6, 1917 (Fortieth Statutes, page 411), and all amendments thereto, and the First, Second, Third, and Fourth Liberty Bond Acts, the Supplement to the Second Liberty Bond Act, and the Victory Liberty Loan Act; titles 1 and 3 of the War Finance Corporation Act (Fortieth Statutes, page 506) as amended by the Act approved March 3, 1919 (Fortieth Statutes, page 1313), and Public Resolution Numbered 55, Sixty-sixth Congress, entitled "Joint resolution directing the War Finance Corporation to take certain action for the relief of the present depression in the agricultural sections of the country, and for other purposes," passed January 4, 1921; also the proclamations issued under the authority conferred by the Acts herein excepted from the effect and operation of

this resolution: *Provided, however,* That nothing herein contained shall be construed as effective to terminate the military status of any person now in desertion from the military or naval service of the United States, nor to terminate the liability to prosecution and punishment under the selective service law, approved May 18, 1917 (Fortieth Statutes, page 76), of any person who failed to comply with the provisions of said Act, or of Acts amendatory thereof: *Provided, further,* That the Act entitled "An Act to amend section 3, title 1, of the Act entitled 'An Act to punish acts of interference with foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes,' approved June 15, 1917 (Fortieth Statutes, page 217), and for other purposes," approved May 16, 1918 (Fortieth Statutes, page 553), be and the same is hereby, repealed, and that said section 3 of said Act approved June 15, 1917, is hereby revived and restored with the same force and effect as originally enacted.

Nothing herein contained shall be held to exempt from prosecution or to relieve from punishment any offense heretofore committed in violation of any Act hereby repealed or which may be committed while it remains in force as herein provided.

Approved, March 3, 1921.

Office Supreme Court, U. S.
FILED
DEC 10 1921
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

No. 422.

WILLIAM H. BRYAN, APPELLANT,

vs.

JOSHUA W. MILES, COLLECTOR OF INTERNAL REVENUE OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND, AND RICHARD S. DODSON, FEDERAL PROHIBITION DIRECTOR FOR THE STATE OF MARYLAND.

Appeal from the District Court of the United States for the District of Maryland.

REPLY AND SUPPLEMENTAL BRIEF FOR APPELLANT.

J. WALLACE BRYAN,
[illegible] B. JONES,
[illegible] T. O'NEILL,
Attorneys and Counselors for Appellant.

(28,363)

The Daily Record Co., Print., Baltimore, Md.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

No. 428.

WILLIAM H. BRYAN, APPELLANT,

vs.

JOSHUA W. MILES, COLLECTOR OF INTERNAL REVENUE OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND, AND RICHARD S. DODSON, FEDERAL PROHIBITION DIRECTOR FOR THE STATE OF MARYLAND, APPELLEE.

Appeal from the District Court of the United States for the District of Maryland.

REPLY AND SUPPLEMENTAL BRIEF FOR THE APPELLANT.

There Is No Provision in the Volstead Act Specifically Prohibiting the Removal of the Liquor Now Sought.

The briefs filed on behalf of the Government by Assistant Attorney-General Willebrandt, Solicitor General Beck and Amicus Curiae Wheeler, present its contentions in the most favorable light possible, but serve only to emphasize the fundamental soundness of the appellant's position.

They bring into clear view the vital and unescapable fact that neither the Eighteenth Amendment nor the Vol-

stead Act specifically forbids the removal of lawfully acquired liquor from a Government bonded warehouse to the owner's home for lawful consumption by himself, his family and his bona fide guests. This really concludes the case, for such removal is clearly lawful unless definitely forbidden by statute, and not (as suggested by the Government) unlawful unless definitely permitted by the Volstead Act. In the absence of such definite statutory prohibition, therefore, the removal remains lawful, and no court or officer is authorized to insert in an existing statute an implied prohibition that is not embraced in the language actually used

The case of Street vs. Lincoln Safe Deposit Company, 245 U. S. 88, directly decides that the removal now sought is legal unless specifically *prohibited* by the Volstead Act, even though not expressly *permitted* by it. Neither the storage of liquor in a private warehouse nor its removal therefrom to the owner's dwelling is specifically *permitted* by the Volstead Act, but this Court held such possession and removal to be lawful because not specifically *prohibited*. The Court says:

> "Thus it is plain that in the sections of the Act relied upon there is *no specific prohibition* against the storage of liquors, under the circumstances admitted to exist in this case, and we find *no other provisions by which such a custody is rendered unlawful.*"
>
> "That transportation of the liquors to the home of the appellant, under the admitted circumstances, is *not such as is prohibited by* the section is * * * apparent * * *."

The omission of such direct prohibition becomes all the more striking when we consider that the Wartime Prohibition Act *did* specifically provide that "no distilled spirits held in bond shall be removed therefrom for bev-

erage purposes except for export." Apt statutory language to accomplish this purpose was thus conspicuously available when the Volstead Act was framed. The omission of a similar clause from the Volstead Act can only be construed as leaving such removal for lawful uses unmolested, whether the omission were intentional or inadvertent, unless an explicit prohibition on such removal is found in other language of the statute.

The Government relies for this prohibition on Section 3 of the Volstead Act, which provides:

> "No person shall on or after the date when the Eighteenth Amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act * * *."

This language, however, does not prohibit the removal sought by the cases at bar. The only words at all pertinent are "transport," "deliver" and "possess." But the "possession" of lawfully acquired liquor in a Government bonded warehouse or in the owner's private dwelling is not forbidden. Again, the case of Street vs. Lincoln Safe Deposit Company, 245 U. S. 88, directly decides that the removal of liquor from a lawful place of storage to the owner's home for lawful use is not such "transportion" as is prohibited by the statute. And the same case decides also that for a warehouseman to "permit the owner to have access to the liquors to take them to his dwelling for lawful use is not a delivery of them within the meaning of this third section."

It is thus entirely clear that this section does not forbid such removal of his lawfully acquired liquor by the appellant. There is no other section that imposes such prohibition. It must follow accordingly that the removal

is still as lawful as it undoubtedly was before the Volstead Act was passed.

The Government, however, seeks to supply the missing prohibition by inference, drawn largely from the alleged intent on the part of the framers of the Eighteenth Amendment and the Volstead Act to prohibit the *consumption* of liquor for beverage purposes, although "consumption" is not mentioned in either the Amendment or the statute. The inevitable wail is raised that a decision that the appellant is entitled to have his liquor for an undoubtedly lawful purpose might enable other persons to obtain liquor from bond for unlawful purposes—as if that furnished any reason for denying the appellant his plain rights. And an attempt is made to distinguish the Street Case from the cases at bar by citing certain differences in some of the facts involved, none of which differences is at all pertinent to the present issue.

It might be a sufficient answer to suggest that mere inferences or conjectural inconveniences furnish no sufficient reason for reading into the Volstead Act language not put there by Congress in order to confiscate the appellant's lawfully acquired property "by preventing or unduly interfering with (its) consumption by the owner." However, the Government's more important contentions will be definitely answered.

(1) Neither the Eighteenth Amendment Nor the Volstead Act Forbids the Consumption of Liquor.

The suggestion that the Eighteenth Amendment and the Volstead Act should be construed as forbidding the *consumption* of liquor for beverage purposes is entitled to short shrift. Whatever may have been the undisclosed purposes of those responsible for this legislation, the fact remains that the Eighteenth Amendment forbids,

and authorized Congress to forbid, only *manufacture, transportation* and *sale*—not consumption. Even the framers of the Volstead Act did not venture to include consumption or use in its inhibitions.

It is true that Section 3 says that "all the provisions of this act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented." But this is not a direct prohibition of such use. And even if it be conceded that such a direction to reverse the ordinary canons for the construction of a highly penal statute is binding on any court, it could only require the court to resolve against beverage use any reasonable doubt as to the scope of specific prohibitions that are fairly susceptible of that construction. It certainly does not authorize any officer or court to apply a prohibition that cannot be included in any reasonable meaning of the language actually used.

The suggestion that constitutional prohibition be construed to forbid the use and consumption of liquor lawfully owned prior to the passage of the Eighteenth Amendment carries the avowed purposes of those in control of prohibition enforcement far beyond anything heretofore attempted by them. It practically asks the court to amend both the Eighteenth Amendment and the Volstead Act to prohibit all beverage use of liquor, in the very teeth of the language of both of them.

It is respectfully submitted that this policy has already been carried too far, and that the time is ripe for holding the enforcement authorities to a closer adherence than many of them have heretofore shown to the plain language of the very law which they are supposed to administer.

The general intent of the law in respect of liquor owned before prohibition was clearly expressed by this Court in the following language from the Street Case:

> "The Congress was concerned with the great problem of preventing the *manufacture and sale of* intoxicating liquors for beverage purposes *in the future* and it seems to have given but slight attention to the consumption of such relatively small amounts of such liquors as might be in existence in private ownership and intended for consumption by the owner, his family or his guests, when the Amendment and the Act should take effect."

This passage, it will be noted, is not confined to liquor in private dwellings or private warehouses, but applies to all existing liquor *"in private ownership" intended* for personal consumption, without reference to its location when the act was passed.

(2) This Case Is Governed by the Street Case.

The Government attempts to distinguish the Street Case from the cases at bar on the ground that the liquor there involved was stored in a private warehouse, whereas the liquor involved in the case at bar is stored in a distiller's bonded warehouse. In support of this supposed distinction, the Government cites in detail various regulations and restrictions imposed by statute on bonded warehouses and the removal of liquor therefrom.

This contention is answered by a consideration of the purpose of these regulations and restrictions. Their sole object is to protect the Government in the collection of its taxes on the liquor stored in bonded warehouses. Every regulation cited by the Government relates to this one end. When the tax is paid, the purpose has been fulfilled, and the Government has no further interest in and exercises no further control over the liquor, but stands

aside and permits it to be removed. These restrictions, therefore, do not in any just sense qualify the certificate holder's constructive possession of the liquor, but simply prevent the removal of the liquor unitl the tax is paid. In all essentials, except in respect of the regulations for enforcing the obligation to pay taxes, the owner's possession of liquor in bond is of the same quality as the owner's possession of liquor in an ordinary warehouse. Even in the latter case, the owner has not the physical custody of his goods, for these are not accessible to him until the warehouse doors are unlocked; and his access to the goods is usually subject to restrictions imposed for the protection of the other property in the warehouse, and is certainly subject to the payment of storage charges, for which the warehouseman has as direct a lien as the Government's lien for its taxes. Differences in detail, therefore, cannot obscure the outstanding fact that liquor in a bonded warehouse is held in a lawful place of storage for its owner, who is entitled to take and remove the same upon payment of the tax; and in this respect the situation is not different in substance from liquor in a private warehouse, which the owner similarly has the right to take and remove in accordance with the warehouse company's regulations and upon payment of its charge for storage.

To cite restrictions on the removal of liquor from bond imposed by the Government for the protection of its taxes as a reason for denying to the appellant after payment of the tax the right of access to the warehouse for the purpose of removing his property would utterly distort these restrictions from their character as mere administratrive tax regulations, and cause them to be employed as a bald excuse for confiscating the appellant's property. Surely, such an intention cannot justly be ascribed to Congress, and could not be constitutionally sustained.

The controlling similarity of the case at bar to the Street Case in all substantial particulars is fully shown on pages 21-30 of the brief heretofore filed on behalf of the appellant in this case (Number 428), to which the attention of the Court is respectfully requested. As therein pointed out in detail, no distinction can be suggested between a private warehouse and a bonded warehouse that is pertinent to the issues involved in the present case, and the reasoning of the court in the Street Case is entirely applicable to the case at bar, with this difference in favor of the instant case, that no question can be raised as to the legality of the possession of liquor held in a bonded warehouse. In every other respect, the two cases are entirely parallel. The constructive possession of the appellant in the case at bar is just as complete as the constructive possession which the appellant had in the Street Case, and once the taxes are paid on the appellant's liquor, and the Government's interference with its removal is withdrawn, it will be necessary only for those in charge of the bonded warehouse to permit the appellant to have access to and take away his barrel of liquor, which is all that the warehouseman had to do in the Street Case. Any suggestion of a difference based on the fact that the appellant's liquor in the Street Case was stored in a room to itself, whereas the liquor in the present case is presumably stored in a space not partitioned off, is merely meticulous and cannot affect the principles involved. These points being established, it is obvious that the removal of the liquor from a bonded warehouse to the appellant's home for lawful use will be no more a "transportation" such as is forbidden by the Eighteenth Amendment and the Volstead Act than was the similar removal of the liquor from the private warehouse to the owner's dwelling which was sustained in the Street Case.

The appellant submits accordingly that the distinctions attempted to be drawn by the Government between the two cases are without significance, and amount practically to an attempt to induce this Court substantially to reverse its holding in the Street Case, or to limit its proper application by merely trivial circumstances.

(3) The Argument of Convenience Refuted.

The Government makes much of the alleged danger that the appellant's success in this case might enable other persons to divert to unlawful uses some of the liquor now stored in bonded warehouses. This contention, however, is based upon a mistaken assumption, and would have no force even if it were sound.

The Government admits that the liquor involved in the present case was lawfully acquired for private consumption in the dwelling of the owner, as specifically permitted by the Volstead Act, and not for sale or other unlawful use. A decision in favor of the appellant, therefore, would do no more than establish his right, and the right of others similarly situated, to withdraw their liquor for a like lawful purpose.

A similar suggestion of the danger of unlawful use that might result from protecting the complainant in his plain rights was made in the Street Case, but was answered by this Court in the following terms:

> "Clearly there is like administrative power under the act to so regulate the transfer of such stored liquors from a warehouse to the dwelling of the owner as to prevent their being used to evade the prohibitions of the act or to substantially interfere with its effective enforcement."

This language is entirely pertinent to the case at bar, and would enable the prohibition authorities to throw such safe-guards around the liquor here involved, and other liquor in like situation, as would minimize the danger suggested.

Conceding for the purpose of the argument, however, that if the present appellant's rights are enforced a certain amount of liquor now in bonded warehouses might be illegally consumed, it is respectfully submitted that this circumstance cannot justify the Government in asking this Court to insert in the Volstead Act a prohibition which was not inserted by Congress. The argument of convenience cannot confer legislative power on either courts or administrative officers to the extent of authorizing them to read into a statute language which was not put there by the body which passed it.

Furthermore, it is submitted that an argument of this character is entirely vicious in principle. Governmental interference with private rights is carried to an intolerable extent when a citizen is denied his plain rights, and his property is virtually confiscated, on the ground that protecting him in his rights might enable other citizens to evade the law. It is respectfully submitted that a denial of fundamental rights on any such grounds as this is fraught with consequences much more dangerous to the body politic than is a possible slight and temporary increase in the illegal consumption of intoxicating liquor.

The foregoing considerations answer the major arguments presented on behalf of the Government. There are certain other features of the case, however, which deserve brief comment

(4) The Purchase of Certificates for Whiskey in Bonded Warehouses Was Not Forbidden by the Wartime Prohibition Act.

The Government suggests, though it does not seriously argue, that the purchase during the effective period of the Wartime Prohibition Act of a warehouse receipt for liquor stored in a bonded warehouse was forbidden by that statute. In support of this suggestion, the Government quotes (Brief, pages 18-19), a garbled and misleading fragment of an opinion rendered by the Attorney General of the United States on August 21, 1919.

The fact is that the Attorney General specifically ruled that the sale of such receipts was *not* prohibited by the Wartime Prohibition Act. His language is as follows:

> "I am of the opinion that the sale of warehouse certificates on whiskey held in bond, and subject to the payment of tax before it can be moved, is *not* a sale of whiskey for beverage purposes within the meaning of the War Prohibition Act and is *not* prohibited."

In other words, the Attorney General's holding *was just the opposite* of that which the Government's brief attributes to him. The first part of the passage quoted by the Government was only *part* of a sentence dealing with receipts for liquor in a *private* warehouse. (The opinion is printed in full as an appendix to this brief.) The suggestion that the purchase of a bonded warehouse receipt was not permitted during the effective period of the Wartime Prohibition Act is further answered on pages 36 to 39 of the brief heretofore filed on behalf of the appellant in this case, to which the Court's attention is respectfully invited.

(5) The Purchase of the Certificate Vested in the Appellant Complete Title to and Consructive Possession of the Wiskey Itself.

It is entirely clear that the purchase and delivery to the complainant of the certificate mentioned in the bill of complaint vested in him the legal title to and constructive possession of the whiskey therein described, as fully as if the whiskey itself had been delivered to him, under both the common law and the express terms of the Uniform Warehouse Receipts Act.

It has long been settled that the endorsement and delivery of a receipt or other document for goods in a warehouse transfer to the purchaser the legal title and constructive possession of the goods themselves. The delivery of the evidence of title is equivalent to the delivery of the property.

Gibson vs. Stevens, 8 How. (U. S.) 384.

This principle has been codified in the Uniform Warehouse Receipts Act (which was in force in Maryland where the liquor in question was stored at the time the complainant purchased his receipt for the same), which provides in express terms that whether the receipt be negotiated, or transferred but not negotiated, the transferee obtains, in either case, the *title to the goods* and the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Uniform Warehouse Receipts Act, Secs. 41 and 42.
See Annotated Code of Md., Art. 14A, Secs. 41 and 42, p. 327.

These principles apply with full force to receipts for whiskey stored in a bonded warehouse.

Thus, in Re MILLER PURE RYE DISTILLING COMPANY, 176 Fed. 606, it was directly decided that a distilling company's warehouse receipts represent the property itself, and their transfer to a purchaser or pledgee operates as a delivery of the whiskey called for thereby, subject to the payment of the tax.

This case was affirmed on appeal under the name of

Taney vs. Penn. Nat. Bank, 187 Fed. 689.
Same Case, 232 U. S. 174.

The application of the Uniform Warehouse Receipts Act to whiskey certificates was impliedly recognized by the Court of Appeals of Maryland in STATE VS. GAMBRILL, 115 Md. 506.

(6) The Appellant's Rights Are Not Affected by His Failure to Report His Ownership of the Whiskey Covered by His Certificate.

The Government suggests that the appellant under Section 33, Title 2, of the Volstead Act, should have reported within ten days after the effective date of the Eighteenth Amendment the kind and amount of intoxicating liquors represented by his certificate. The Government does not, however, explain the bearing of this suggestion, and does not cite any provision in the statute to the effect that failure to make such report deprived the appellant of his rights in the liquor.

This inquiry need not be prolonged, however, for the suggestion that liquor in bonded warehouses was required to be reported under Section 33 is palpably absurd. The obvious purpose of this requirement was simply to enable the prohibition authorities to keep track of liquor in private hands. There would be no reason for demanding reports of liquor in bonded warehouses, since the Govern-

ment already has an accurate record of all liquors so held, and exercises close supervision over both warehouse and contents. Most of the liquor in bonded warehouses was and is represented by certificates outstanding in private hands, but apparently no reports of such liquor have ever been made or required. If the Government's contention should now be sustained, therefore, it would probably result in confiscating the greater part of the liquor in bond.

Even the possession of liquor by a person not legally permitted to possess it is only prima facie evidence that such liquor is being kept for disposition in violation of the statute, but this presumption is rebuttable (Street vs. Lincoln Safe Deposit Company). Certainly a more drastic rule should not be applied as against liquor in bonded warehouses under Governmental supervision where it is lawfully entitled to be kept.

(7) An Intention Virtually to Confiscate the Appellant's Whiskey by Preventing Its Removal for Lawful Use Cannot Be Rested on Mere Inference.

The Government cites Section 37 and other sections of the Volstead Act permitting the removal of liquor from bond for certain purposes and uses, and argues that these provisions negative an intent on the part of Congress that such liquor should be withdrawn for any other purposes.

To this it is answered that the prohibition of the removal now sought, and the virtual confiscation of the appellants' property which would result therefrom, cannot be sustained by inference drawn from provisions dealing with other matters, or from similar negative circumstances. As several times pointed out, *none* of the sections cited by the Government *definitely forbids* the removal now sought, and such prohibition cannot be sup-

plied by inference as to a supposed intention that Congress has never expressed. The appellant is entitled to his property *unless* its removal is *forbidden* in the clear terms required of a penal or criminal statute, and there is no such prohibition in the Volstead Act.

In the language of this Court in the Street Case:

> "An intention to confiscate private property, even in intoxicating liquors, will not be raised by inference and construction from provisions of law which have ample field for their operation in effecting a purpose clearly indicated and declared."

The Government's argument on this point likewise finds its conclusive answer in the Street Case. The Court there suggests:

> "It may be that the custody of liquors by a warehouse company was thus not declared to be unlawful because the writers of the Act did not have such a case in mind, but it was more probably because Congress would not consent to allow lawful possession and use of liquors in dwellings having storage facilities for them, while denying the only possible means of preserving and protecting such liquors to persons with less commodious homes * * *."

The Government attempts to avoid the effect of this language by omitting to quote in its briefs the second half of the passage, and claiming that Section 37, Title II, and Section 6, Title III, of the Volstead Act indicate that Congress *did* have in mind liquor in bonded warehouses.

This latter circumstances, however, only strengthens the appellants' position. Since Congress had its attention directed specifically to liquor in bond, and also had before it the express language of the Wartime Prohibition Act unequivocally forbidding its removal for beverage purposes, the failure of Congress to incorporate a similar

prohibition in the Volstead Act, or any other language that can possibly include such prohibition, leaves no alternative but to conclude that the removal now sought is not forbidden.

The Court's suggestion regarding the scarcity of storage facilities in private dwellings is an entirely practical one, and fully accounts for the omission of any provision in the Volstead Act prohibiting the storage of lawfully-owned pre-prohibition liquor in either private or *bonded* warehouses until the owner is ready to remove them to his home for lawful uses. A bonded warehouse is the most natural, convenient and safe place for the storage of liquor, and liquor in such warehouses is more easily kept track of than liquor in private storage. There is thus no reason why storage in and removal from private warehouses should be permitted, but storage in and removal from bonded warehouses should be forbidden. On the contrary, every consideration of practical enforcement of prohibition is in favor of the handling of liquor from bonded rather than private warehouses.

(8) If Construed to Forbid the Removal of the Liquor Now Sought, the Volstead Act Is to That Extent Unconstitutional.

The constitutionality of the Volstead Act, if so construed as virtually to confiscate lawfully acquired liquors by preventing or unduly interfering with their consumption by the owners, is discussed in the appellants' main briefs. As stated by Mr. Justice McReynolds: "The Eighteenth Amendment gave no such power to Congress. Manufacture, sale and transportation are the things prohibited,—not personal use" (Street vs. Lincoln Safe Deposit Company).

The Government suggests that there is no confiscation because the appellant may still sell his certificate and

enable the liquor to be withdrawn for non-beverage purposes. As shown in the appellant's briefs, however, it is a virtual taking of the appellant's property to deny him its possession and use for the very purpose for which it was acquired, and this is beyond the scope of any power conferred on Congress by the Eighteenth Amendment. The cases cited by the Government do not meet the issue, for they were concerned with the police power of the state to regulate intoxicating liquors; and under this power the state may do anything that is not specifically forbidden by the Federal Constitution. The power of Congress, of course, is governed by other considerations, for Congress is permitted to exercise only powers specifically granted to it; and since the power of Congress to deal with intoxicating liquor is granted by the Eighteenth Amendment, which forbids only manufacture, transportation and sale, the power of Congress to confiscate liquors lawfully acquired previously to the passage of the Amendment cannot be established by citing cases upholding similar action by the states.

The Street Case is again pertinent at this point:

> "Since here, as always, the purpose of Congress in enacting a law is of importance in determining the meaning of it, it is noteworthy that Title II of the Volstead Act was passed under the grant of power to enforce the first section of the Eighteenth Amendment to the Constitution of the United States, which prohbits the manufacture, sale and transportation of intoxicating liquors for beverage purposes, but does not indicate any purpose to confiscate liquors lawfully owned at the time the amendment should become effective and which the owner intended to use in a lawful manner."

In conclusion, it is submitted that none of the techicalities cited on behalf of the Government in its effort to deprive the appellant of his property can obscure his clear

right, as established in terms by the Street case, to remove his lawfully-owned liquor from a lawful place of storage to his dwelling for lawful use. In all substantial particulars that have any pertinence to the issue, the present case is identical with the Street Case and is governed by the just principles which that case established.

The decree appealed from should accordingly be reversed, with directions to grant the relief prayed, under such safeguards as the Court may deem proper to prevent the diversion of the liquor to unauthorized purposes.

Respectfully submitted,

J. WALLACE BRYAN,
JULIAN S. JONES,
JAMES T. O'NEILL,

Attorneys and Counselors for Appellant.

APPENDIX.

See Opinions of The Attorney General of The United States Advance Sheets for 1919, page 28.

Department of Justice,

August 21st, 1919.

Sir:

I have the honor to acknowledge receipt of your letter of August 13th, requesting an opinion as to whether the sale of Warehouse certificates, representing whiskey, constitutes a violation of the War Prohibition Act. (40 Stat. 1046.)

Ordinarily warehouse receipts are subject to sale, and when sold and delivered, pass title to the property represented by them as fully and completely as if the property itself was delivered. If the tax on whiskey has been paid and it has been removed from the warehouse of which the Government has control and stored in an ordinary warehouse, the sale of the warehouse receipts would be a sale of the whiskey, and where such sale is made for beverage purposes, that is not specifically for some non-beverage purpose, it would be a clear violation of the War Prohibition Act.

I assume, however, that this is not the character of certificate referred to in your letter. I presume you refer to certificates representing whiskey held in bond, and which cannot be removed from the warehouse until the tax is paid. Under those conditions the purchaser of the certificate acquires all the rights of the seller, but these rights are simply to remove the whiskey from the warehouse upon the payment of the tax and compliance with all the

regulations of the Bureau of Internal Revenue. In other words, he acquires the whiskey subject to the rights of the Government.

The War Prohibition Act prohibits, after June 30th, 1919, not only the *manufacture* and *sale* of whiskey, but also its *removal* from bond for beverage purposes, except for export. Since this law became effective, therefore, the purchaser of such a certificate becomes the owner of the whiskey, not only subject to the rights of the Government, but without the right to remove it for beverage purposes, except for export, as long as the War Prohibition Act remains in force. The sale of the certificates, therefore, expressly negatives the idea that it is a sale for beverage purposes, or at least for the purpose of *using* or *selling* the whiskey as a beverage as long as its removal for beverage purposes is unlawful.

I am of the opinion that the sale of warehouse certificates on whiskey held in bond, and subject to the payment of tax before it can be removed, is not a sale of whiskey for beverage purposes within the meaning of the War Prohiibtion Act and is not prohibited.

Respectfully,

A. MITCHELL PALMER.

To the Secretary of the Treasury,

August 21st, 1919.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 428.

WILLIAM H. BRYAN, APPELLANT,

vs.

JOSHUA W. MILES, COLLECTOR OF INTERNAL REVENUE OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND, AND RICHARD S. DODSON, FEDERAL PROHIBITION DIRECTOR FOR THE STATE OF MARYLAND.

Appeal from the District Court of the United States for the District of Maryland.

Filed July 26, 1921.

MOTION TO ADVANCE APPEAL.

Now comes William H. Bryan, appellant, by Julian S. Jones, J. Wallace Bryan, James T. O'Neill, Glendy B. Arnold and Elliott W. Major, attorneys and counselors for said appellant, and moves this Honorable Court to advance his appeal, case No. 428 on the docket of the court for the October Term, 1921, and make an order setting same for argument and sub-

mission on Monday, the 10th day of October, 1921, at the same time and along with the case of Charles Corneli, appellant, vs. George H. Moore, Collector of Internal Revenue, same being case No. 174 on the docket of the October Term, 1921, and the case of George J. Ghio, appellant, vs. George H. Moore, Collector of Internal Revenue, same being case No. 175 on the docket, October Term, 1921, and as reasons therefor appellant states:

1. That the said cases of Charles Corneli, appellant, No. 174, and George J. Ghio, appellant, No. 175, were on motion advanced by the Court and set for joint argument and submission on Monday, October 10, 1921; and that Glendy B. Arnold and Elliott W. Major, who are attorneys and counselors for appellants in said cases No. 174 and No. 175, are also attorneys and counselors for appellant in the instant case, No. 428, and ask that this case be advanced and argued and submitted jointly with the said Corneli and Ghio cases.

2. That the questions involved in the Corneli and Ghio cases are identical in principle with the questions involved in the case of William H. Bryan, appellant, No. 428. The appellant in each of the three cases was and is the owner of a warehouse receipt for a barrel of distilled spirits on deposit in a Government bonded warehouse of the United States, and the

distilled spirits in each case were manufactured and deposited in said Government bonded warehouses long prior to the effective date of the Eighteenth Amendment to the Constitution of the United States and the National Prohibition Act and the effective date of the War-Time Prohibition Act. Appellant in each case being the owner of the warehouse receipt seeks by his bill to remove the distilled spirits from the Government bonded warehouse, where deposited, to his private dwelling, same to be used therein for lawful purposes only.

3. Appellant Corneli in case No. 174 has owned his warehouse receipt for the barrel of distilled spirits on deposit in the Government bonded warehouse continuously since the spring of 1917, a date long prior to the effective date of the Eighteenth Amendment and the National Prohibition Act. Appellant Ghio, in case No. 175, purchased his warehouse receipt on the 28th day of February, 1920, a date after the Eighteenth Amendment and the National Prohibition Act became effective. The barrel of spirits, however, was manufactured and deposited in the Government bonded warehouse long prior to the effective date of both the Amendment and the National Prohibition Act. In the instant case William H. Bryan, appellant (case No. 428), purchased and became the owner of the warehouse receipt for the barrel of spirits de-

posited in the Government bonded warehouse on the 2nd day of October, 1919, a date prior to the effective date of the Eighteenth Amendment and the National Prohibition Act and after the enactment of the War Time Prohibition Act.

4. The argument and submission of this appeal at the same time and jointly with the Corneli case No. 174 and the Ghio case No. 175 will conserve both the time and the labor of the Court in considering and disposing of the cases.

5. The appellant, William H. Bryan, has printed his brief in this cause and has, under the rules, filed thirty (30) copies of his brief with the Clerk of this Honorable Court, and has accompanied same by proper and satisfactory proof of service of a copy of his said brief upon Robert R. Garman, United States District Attorney for the District of Maryland, counsel for the adverse parties.

6. The bill in the instant case was filed to enforce the right of the appellant, who is the bona fide owner of the warehouse receipt for one barrel of distilled spirits on deposit in the Government bonded warehouse of the United States, to remove same to his private dwelling, situated in Baltimore County in the State of Maryland and which is used as his dwelling only and to keep the same in said dwelling for the personal use of appellant, the members of his family

and his bona fide guests when entertained therein, and for such uses only in his private dwelling as is now authorized and permitted by the National Prohibition Act; and the possession of said spirits is not desired for the purpose of barter or sale or of disposing of the same in violation of any law of the United States.

7. There are many thousands of persons owning small quantities of spirits, in bonded warehouses of the United States, which, like appellant, were lawfully acquired for private consumption in their dwellings only, and who have been denied the right to take possession of their property and remove same to their private dwellings for lawful uses therein. According to actual tests and common experience the "outage" on distilled spirits on deposit in Government bonded warehouses, by leakage and evaporation, is approximately two gallons or more per barrel per-annum. The loss to appellant and to those who own distilled spirits and who are similarly situated as appellant has already been very great, and, no doubt, will extend into millions of gallons before this appeal would be reached in its regular order on the docket of this court, and an early disposition of the appeal will minimize this great and irreparable loss to appellant and other lawful owners.

8. The appellant is being denied the right to the lawful use of his property, lawfully acquired; and, being denied the right to the lawful use and enjoyment of same, his property is, by leakage and evaporation, daily being wasted, destroyed and lessened in quantity (same being in barrels and not bottled); and having been on deposit in said Government bonded warehouse for some years prior to the adoption of the Eighteenth Amendment to the Constitution of the United States and the enactment of the Volstead Act, if appellant is not permitted to remove same and take possession thereof, at an early date, a large part of his property will have been wasted and destroyed and, in effect, confiscated. The appellant is further required to pay monthly storage charges and the value of his property is being needlessly consumed by the payment of such charges.

9. In addition to these facts and reasons why this appeal should be advanced and argued and submitted at the same time and along with cases No. 174 and No. 175, the case presents questions of great public interest, and also, by reason of the taxes to be paid on withdrawal from bond, affects the revenues of the Government of the United States. The questions presented by the particular facts in this appeal, relative to the removal by the owner of his distilled spirits, lawfully acquired, from the Government bonded

warehouse to the private dwelling of appellant, to be used therein only as permitted and authorized by the "National Prohibition Act," should be specifically settled, and that at an early date, so as to save appellant and other owners similarly situated from great and irreparable property loss.

Respectfully submitted,

JULIAN S. JONES,
J. WALLACE BRYAN,
JAMES T. O'NEILL,
GLENDY B. ARNOLD,
ELLIOTT W. MAJOR,
Attorneys and Counselors for Appellant.

I concur in above motion

Jas. M. Beck,

Solicitor General

NOV 12 1921
WM. R. STANSBURY
CLERK

No. 548.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

WALTER A. EASTES, APPELLANT,

VS.

GEORGE F. CRUTCHLEY, COLLECTOR OF INTERNAL REVENUE FOR THE SIXTH DISTRICT OF MISSOURI, ET AL.

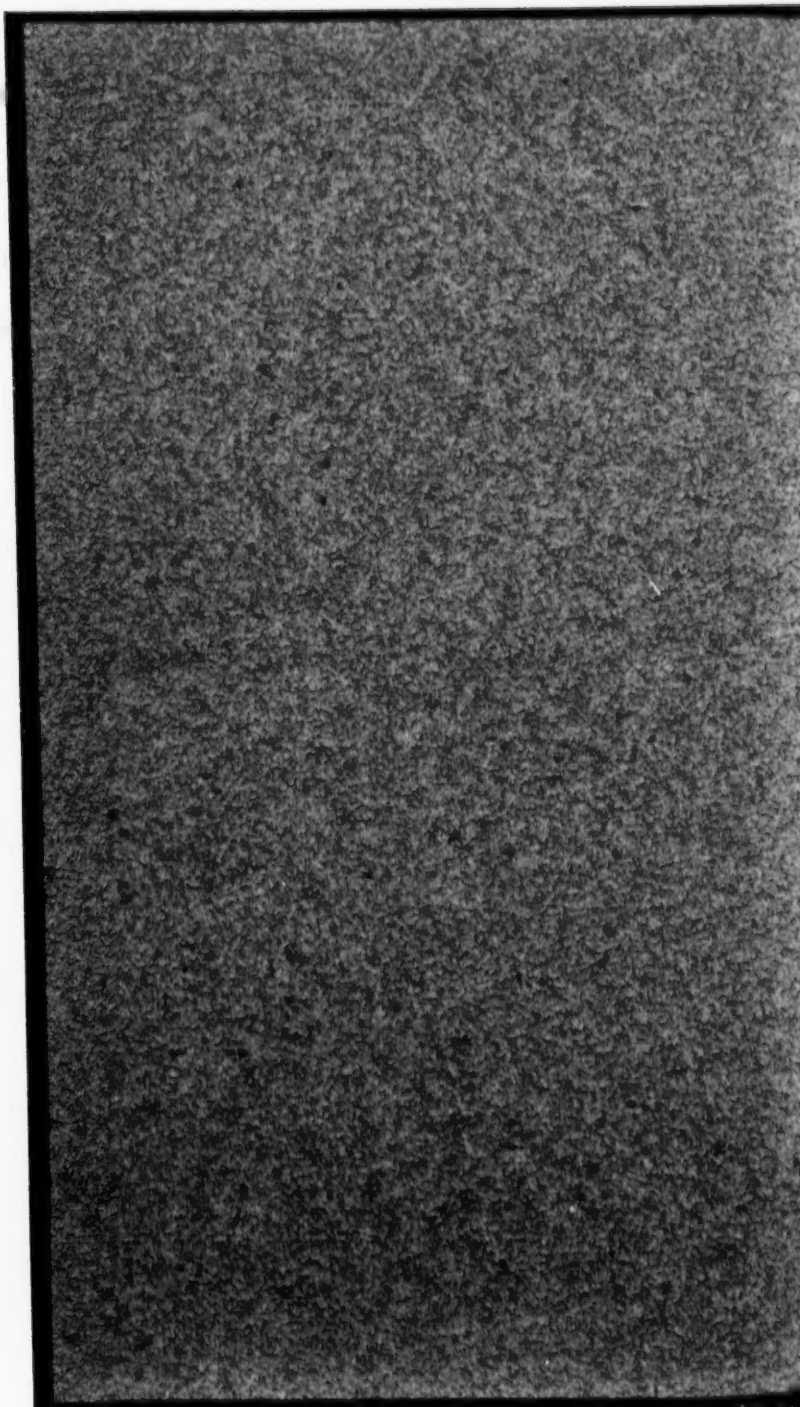
APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

Filed September 23, 1921.

MOTION TO ADVANCE APPEAL.

ELLIOTT W. MAJOR and
JOHN T. BARKER,
Attorneys and Counselors for Appellant.

(28,508)



No. 548.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

WALTER A. EASTES, APPELLANT,

VS.

GEORGE F. CRUTCHLEY, COLLECTOR OF INTERNAL REVENUE FOR THE SIXTH DISTRICT OF MISSOURI, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

Filed September 23, 1921.

MOTION TO ADVANCE APPEAL.

Now comes Walter A. Eastes, appellant, by Elliott W. Major and John T. Barker, attorneys and counselors for said appellant, and moves this Honorable Court to advance his appeal, case No. 548, on the docket of the court for the October Term, 1921, and make an order

setting same for argument and submission on Monday, the 5th day of December, 1921, and as reasons therefor appellant states:

1. That the cases of Charles Corneli appellant, No. 174, and George J. Ghio, appellant, No. 175, and William H. Bryan, appellant, No. 428, were on motions advanced by the court and set for argument and submission on Monday, December 5th, 1921.

2. That the questions involved in the Corneli, Ghio and Bryan cases are identical in principle with the questions involved in the instant case. The appellant in each of the cases (Corneli, Ghio, Bryan and Eastes) was and is the owner of a warehouse receipt for a barrel of distilled spirits on deposit in a government bonded warehouse of the United States, and the distilled spirits in each case were manufactured and deposited in said government bonded warehouses long prior to the effective date of the Eighteenth Amendment to the Constitution of the United States and the National Prohibition Act and the effective date of the War Time Prohibition Act. Appellant in each case being the owner of the warehouse receipt seeks by his bill to remove the distilled spirits from the government bonded warehouse, where deposited, to his private dwelling, same to be used therein for lawful purposes only.

3. Appellant Corneli in case No. 174 has owned his warehouse receipt for the barrel of distilled spirits on deposit in the government bonded warehouse continuously since the spring of 1917, a date long prior to the effective

date of the Eighteenth Amendment and the National Prohibition Act. Appellant Ghio, in case No. 175, purchased his warehouse receipt on the 28th day of Feb., 1920, a date after the Eighteenth Amendment and the National Prohibition Act became effective. The barrel of spirits, however, was manufactured and deposited in the government bonded warehouse long prior to the effective date of both the Amendment and the National Prohibition Act. Appellant, William H. Bryan, in case No. 428, purchased and became the owner of the warehouse receipt for the barrel of spirits deposited in the government bonded warehouse on the 2nd day of October, 1919, a date prior to the effective date of the Eighteenth Amendment and the National Prohibition Act and after the enactment of the War Time Prohibition Act. Appellant, Walter A. Eastes in case No. 548, became the owner of his warehouse receipt for a brand of distilled spirits on the 24th day of August, 1917, a date prior to the effective dates of the National Prohibition Act and the Eighteenth Amendment. The bill was filed after the termination of the War Time Prohibition Act.

4. The argument and submission of this appeal on December 5th, 1921, will conserve both the time and the labor of the court in considering and disposing of this and other cases set for that day.

5. The appellant, Walter A. Eastes, has printed his brief in this cause and has, under the rules, filed thirty (30) copies of his brief with the clerk of this Honorable Court, and has accompanied same by proper and satis-

factory proof of service of a copy of his said brief upon Chas. C. Madison, United States District Attorney for the Western District of Missouri, counsel for the adverse parties.

6. The bill in the instant case was filed to enforce the right of the appellant, who is the bona fide owner of the warehouse receipt for one barrel of distilled spirits on deposit in the government bonded warehouse of the United States, to remove same to his private dwelling, situated in Kansas City, Missouri, and which is used as his dwelling only and to keep the same in said dwelling for the personal use of appellant, the members of his family and his bona fide guests when entertained therein, and for such uses only in his private dwelling as is now authorized and permitted by the National Prohibition Act; and the possession of said spirits is not desired for the purpose of barter or sale or of disposing of the same in violation of any law of the United States.

7. There are many thousands of persons owning small quantities of spirits, in bonded warehouses of the United States, which, like appellant, were lawfully acquired for private consumption in their dwellings only, and who have been denied the right to take possession of their property and remove same to their private dwellings for lawful uses therein. According to actual tests and common experience the "outage" on distilled spirits on deposit in government bonded warehouses, by leakage and evaporation, is approximately two gallons or more per barrel per annum. The loss to appellant and to those who

own distilled spirits and who are similarly situated as appellant has already been very great, and, no doubt, will extend into millions of gallons before this appeal would be reached in its regular order on the docket of this court, and an early disposition of the appeal will minimize this great and irreparable loss to appellant and other lawful owners.

8. The appellant is being denied the right to the lawful use of his property, lawfully acquired; and, being denied the right to the lawful use and enjoyment of same, his property is, by leakage and evaporation, daily being wasted, destroyed and lessened in quantity (same being in barrels and not bottled); and having been on deposit in said government bonded warehouse for some years prior to the adoption of the Eighteenth Amendment to the Constitution of the United States and the enactment of the Volstead Act, if appellant is not permitted to remove same and take possession thereof, at an early date, a large part of his property will have been wasted and destroyed and, in effect, confiscated. The appellant is further required to pay monthly storage charges and the value of his property is being needlessly consumed by the payment of such charges.

9. In addition to these facts and reasons why this appeal should be advanced the case presents questions of great public interest, and also, by reason of the taxes to be paid on withdrawal from bond, affects the revenues of the government of the United States. The questions presented by the particular facts in this appeal, relative to

the removal by the owner of his distilled spirits, lawfully acquired, from the government bonded warehouse to the private dwelling of appellant, to be used therein only as permitted and authorized by the "National Prohibition Act," should be specifically settled, and that at an early date, so as to save appellant and other owners similarly situated from great and irreparable property loss.

Respectfully submitted,

ELLIOTT W. MAJOR and
JOHN T. BARKER,
Attorneys and Counselors for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1921.

WALTER A. EASTES, APPELLANT,
v.
GEORGE F. CRUTCHLEY, COLLECTOR OF Internal Revenue for the Sixth District of Missouri, et al. } No. 548.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

BRIEF FOR THE APPELLEES.

STATEMENT.

On August 24, 1917, appellant bought a barrel of whiskey. It has since been and is now in General Bonded Warehouse No. 2, Kansas City, Missouri.

On May 4, 1921, appellant, in writing, applied to the prohibition director for delivery, possession, the right to transport the barrel to his private dwelling, and the right to keep and use the same for lawful purposes therein. The director refused.

Appellant also tendered to the collector the full amount of the tax, demanded of him that he issue revenue stamps showing payment, and that he release the barrel. The collector likewise refused.

Appellant contends that in refusing to grant the application, accept the tender of tax, and issue the stamps, the appellees have claimed to act under the terms of the Volstead Act, while the right asserted by him is not forbidden by either the eighteenth amendment or the Volstead Act.

Appellant further contends that if the Volstead Act is susceptible of the construction placed upon it by the appellees, then that part of the act under which they purport to act is unconstitutional under the eighteenth amendment, in that it deprives him of his property without due process of law and without just compensation, and denies him the equal protection of the law contrary to the fifth amendment.

BRIEF.

The question in this case is fully embraced within the questions in issue in *Charles Corneli, Appellant*, v. *George H. Moore, Collector*, No. 174; *George J. Ghio, Appellant*, v. *George H. Moore, Collector*, No. 175; and *William H. Bryan, Appellant*, v. *J. W. Miles, Collector*, No. 428.

Corneli bought his barrel in the spring of 1917. Eastes bought his barrel on August 24, 1917. Ghio bought his warehouse receipt in February, 1920. Bryan bought his barrel on October 2, 1918.

The argument in the foregoing cases is applicable to the instant case and the final decrees in those cases will control here.

The decree should be affirmed.

JAMES M. BECK,
Solicitor General.

DECEMBER, 1921.

○

the tax, for transportation to his dwelling for consumption there as a beverage by himself, his family and *bona fide* guests. Sections 3, 25, 33, 37, Title II, and § 6, Title III, considered. P. 495. *Street* v. *Lincoln Safe Deposit Co.*, 254 U. S. 88, distinguished.

2. Thus construed, the act does not deprive the owner of the liquor of property without due process of law, or take it for public purposes without compensation. P. 498.

3. So *held*, where ownership was acquired, by purchase of warehouse receipts, (a) before the ratification of the Eighteenth Amendment, (b) after the ratification and before the effective date of the Prohibition Act, and (c) after that date. P. 498.

Affirmed.

Appeals from decrees of District Courts dismissing on motions as many bills filed by parties alleging themselves to be owners of barrels of whisky in bonded warehouses and praying mandatory injunctions to compel the collectors of internal revenue in charge to accept payment of the government taxes, issue the stamps and allow removal. In Nos. 428 and 548, the federal prohibition directors were also joined, the bills praying that they be required to issue the necessary permits for removal and transportation to plaintiffs' homes. In No. 174, the plaintiff alleges that he became the owner in the spring of 1917, and in No. 175 that ownership began on February 28, 1920, by purchase of a warehouse receipt. In Nos. 428 and 548, the bills show that ownership began by purchase of warehouse receipts, October 2, 1919, and August 24, 1917.

Mr. Elliott W. Major and *Mr. Glendy B. Arnold* for appellants in Nos. 174, 175, and 548. *Mr. John T. Barker* was also on the brief in No. 548.

Mr. Julian S. Jones and *Mr. J. Wallace Bryan*, with whom *Mr. James T. O'Neill*, *Mr. Glendy B. Arnold* and *Mr. Elliott W. Major* were on the briefs, for appellant in No. 428.

Mr. Solicitor General Beck and *Mrs. Mabel Walker Willebrandt*, Assistant Attorney General, for appellees.

Mr. Wayne B. Wheeler, by leave of court, filed a brief as *amicus curiae*.

MR. JUSTICE MCKENNA delivered the opinion of the court.

These cases, though having different parties and coming from different courts, are dependent upon the same considerations. They differ in some details but they all involve the Eighteenth Amendment to the Constitution of the United States and its assistant legislation, the National Prohibition Act.

The Amendment after its ratification prohibited for beverage purposes, among other things, the transportation of intoxicating liquor within the United States and all territory subject to the jurisdiction thereof. And Congress and the States were given concurrent power to enforce the prohibition by appropriate legislation.

Congress in pursuance of that power passed the National Prohibition (Volstead) Act, 41 Stat. 305. Are the cases at bar within the mandate and the prohibition, are the special questions involved in them.

First, as to the cases as displayed in the bills—there are some differences in their averments but their essential allegations identifying them in principle are as follows: The appellees were, respectively, Collectors of Internal Revenue for the First Internal Revenue District of the State of Missouri, the District of Maryland, and the Sixth Internal Revenue District of the State of Missouri. It was the duty of each to collect and receive taxes on distilled spirits in government bonded warehouses, and upon payment of the taxes to issue revenue stamps showing the payment of the taxes. As such officers they had, respectively, the custody and control of the spirits, and the right of ingress to and egress from the warehouses.

Each appellant became the purchaser of a barrel of whiskey, in one of the warehouses (it is designated),

which was identified and which he was desirous of removing to his dwelling for use and disposition of the spirits according to law. The appellees refused to release or deliver the spirits, or to accept the payment of the taxes thereon which appellants either tendered or, on account of opposing declarations of appellees, ommitted to tender.

The refusal of appellees to release the spirits is asserted to be wrongful and illegal and a violation of the Fifth Amendment to the Constitution of the United States, in that it deprives appellants of their property without due process of law and takes it for public use without just compensation.

The prayers of the bills were in effect (we disregard particulars) to require appellees to do what was necessary to release the spirits from the warehouses and to enable them to be transported to the respective dwellings of appellants.

The bills were dismissed upon motions of appellees.

Against the rulings upon the motions, and against the decrees dismissing the bills, appellants adduce certain provisions of the National Prohibition Act and cite *Street* v. *Lincoln Safe Deposit Co.*, 254 U. S. 88.

So much of the cited portions as is relevant we insert in the margin. We may observe, however, that while their provisions extend to the manufacture, sale and other disposition of intoxicating beverages, as well as to their transportation, we only insert the provisions concerning the latter.[1]

[1] "Sec. 3. No person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect . . . transport . . . or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented. . . . *Provided*, That nothing in this Act shall prohibit the purchase and sale of warehouse receipts

Before considering the provisions here specially involved, we may say that the act has been sustained, and it has been decreed that the power of Congress can be asserted against the disposal for beverage purposes of all liquor manufactured before the Amendment became effective, as it can be asserted against subsequent manufacture for those purposes. Either case is within the constitutional mandate and prohibition.

A consideration of the act becomes necessary. Section 3 is comprehensive in its prohibition, and it takes pains to provide that it shall have such liberality of construction as to achieve its declared purpose.

---

covering distilled spirits on deposit in Government bonded warehouses, and no special tax liability shall attach to the business of purchasing and selling such warehouse receipts."

"Sec. 25. It shall be unlawful to have or possess any liquor or property designed for the manufacture of liquor intended for use in violating this title or which has been so used, and no property rights shall exist in any such liquor or property. . . . No search warrant shall issue to search any private dwelling occupied as such. . . . The term 'private dwelling' shall be construed to include the room or rooms used and occupied not transiently but solely as a residence in an apartment house, hotel, or boarding house. . . ."

"Sec. 33. After February 1, 1920, the possession of liquors by any person not legally permitted under this title to possess liquor shall be prima facie evidence that such liquor is kept for the purpose of being . . . disposed of in violation of the provisions of this title. Every person legally permitted under this title to have liquor shall report to the commissioner within ten days after the date when the eighteenth amendment of the Constitution of the United States goes into effect, the kind and amount of intoxicating liquors in his possession. But it shall not be unlawful to possess liquors in one's private dwelling while the same is occupied and used by him as his dwelling only and such liquor need not be reported, provided such liquors are for use only for the personal consumption of the owner thereof and his family residing in such dwelling and of his bona fide guests when entertained by him therein; and the burden of proof shall be upon the possessor in any action concerning the same to prove that such liquor was lawfully acquired, possessed, and used."

It is, however, contended that there is modification of this apparent universality of prohibition, and that, by a permission of traffic in warehouse receipts, liquor in storage in bonded warehouses is not subject to the ban of the section.

Regarding the words of § 3 in connection with some of the provisions of §§ 25 and 33, they give some plausibility to the contention and some puzzle to construction, but we are repelled nevertheless from those of appellants. To accept them would defeat the purpose of the act and its achievement of the mandate of the Constitution. That mandate is, as will be seen by reference to § 1 of the Amendment, that the "transportation of intoxicating liquors within . . . the United States . . . for beverage purposes" shall be prohibited. And, as we have said, the act declares (§ 3) that all of its provisions shall be liberally construed "to the end" to quote its words, "that the use of intoxicating liquor as a beverage may be prevented." The method of appellants, we think, tended to the opposite effect; tended to the use of liquor as a beverage—not its prevention.

We are unable to see in § 33 which takes illegality from the "liquors in one's private dwelling while the same is occupied and used by him as his dwelling only" and the rights that may attach to liquors in such situation an intention to extend such rights to liquors not so situated or, to put it more pointedly, an intention to make all bonded warehouses of the country outbuildings of its dwellings.

There is nothing favorable to appellants' contention in § 37.[1] It permits transportation to bonded warehouses

[1] "Sec. 37. Nothing herein shall prevent the storage in United States bonded warehouses of all liquor manufactured prior to the taking effect of this Act, or prevent the transportation of such liquor to such warehouses or to any wholesale druggist for sale to such druggist for purposes not prohibited when the tax is paid, and permits may be issued therefor. . . ."

but not from them as inferred by appellants. Transportation from them is confined to transportation to a wholesale druggist for sale to him for purposes not prohibited. A permit is necessary even for this.

In connection with § 37; § 6, Title III of the act is pertinent. It permits distilled spirits produced and fit for beverage purposes remaining in bonded warehouses to be withdrawn for denaturing "or for deposit in a bonded warehouse established under this Act."

Counsel urge *Street* v. *Lincoln Safe Deposit Co., supra,* against this conclusion, and as sustaining their contention. In that case, by motion to dismiss, it was admitted that Street was the lessee of a room in the Deposit Company's warehouse, in which he had stored liquors, acquired prior to the effective date of the National Prohibition Act, which liquors were "in his exclusive possession and control, and are intended, and will be used only for personal consumption by himself and the members of his family or his bona fide guests." The storage room was obviously the use of a convenience very commonly employed and contributory to his dwelling, and therefore, for the reasons stated in that opinion, it was concluded that the National Prohibition Act did not render unlawful the storage of liquors there involved or their transportation, under proper permit, to the dwelling of the owner for lawful uses. And this difference in the facts in the case from those in the cases at bar removes it as a precedent. There is no analogy in Street's relation to the room in the Deposit Company's warehouse and appellants' relation to bonded warehouses. They had neither control, access to nor possession of the spirits they purchased. Mere ownership was not the equivalent. Under § 33 there must be ownership, and possession in one's private dwelling, and that character cannot be assigned to the bonded warehouses of the Government.

Comment on other provisions of the act we do not think is necessary. A reference to them demonstrates that they have no militating force against our conclusion.

But appellants contend the effect we assign to the act is to assign to it the effect of depriving them of their property without due process of law or taking it for public purposes without just compensation. To understand the conditions of the contention, a distinction in the cases must be noted. The purchases by appellants were at different dates. The spirits purchased by Corneli were all stored in bond in the Spring of 1917, a date prior to the ratification of the Eighteenth Amendment. Bryan became the owner of his on the second of October, 1919, and, therefore, prior to the effective date of the Volstead Act which was January 16, 1920. *Dillon* v. *Gloss*, 256 U. S. 368. Ghio's purchase was about the twenty-eighth of February, 1920, which was after the date of the Amendment and the effective date of the Volstead Act. Eastes avers his ownership dates from August 24, 1917.

In considering the bearing of the dates of purchase and their relation to the dates of the Amendment and the Volstead Act, the question of their construction blends in the discussion somewhat confusingly with the question of their constitutionality. It is asserted that the Eighteenth Amendment was not intended to be retrospective and that if it and the Volstead Act should be so treated, that is, if applied to liquor manufactured and lawfully acquired before their respective dates, they are void—they thereby taking from property its essential attributes, " the right to use it, possess it and enjoy it," contrary to the Fifth Amendment to the Constitution,—and that the Fifth Amendment is not repealed by the Eighteenth Amendment. We are not disposed to trace the elements of the contentions minutely—they are answered in all their phases by the *National Prohibition Cases*, 253 U. S. 350, 387.

Decrees affirmed.

MR. JUSTICE McREYNOLDS, dissenting.

These cases differ somewhat and I speak with reference to No. 174—Corneli v. Moore,—finally determined on motion to dismiss.

The opinion and ruling just announced seem to me in direct conflict with *Street* v. *Lincoln Safe Deposit Co.* (1920), 254 U. S. 88. I think the reasoning of that opinion is bad; but it has been adopted, and the construction which it placed upon the act should be adhered to or frankly overruled. The effort to distinguish the present case from the earlier one is but toying with the immaterial.

Prior to the enactment of any National Prohibition law and during the Spring of 1917, Corneli acquired the barrel of distilled spirits numbered 125,694, then on deposit in United States General Bonded Warehouse No. 1, St. Louis, Mo., where he resides. In strict conformity with law he allowed the spirits to remain there until the Autumn of 1920, when he offered to pay the taxes and demanded permission to move them to his home for lawful use.

In *Street* v. *Lincoln Safe Deposit Co.*, wines and liquors, worth more than $3,000 "securely and properly packed and stored in bottles, barrels, casks and cases," had long been held in the large public warehouse, No. 60 East Forty-second Street, New York City, owned and operated by the Deposit Company, and it was alleged that "complainant does not intend to remove the same voluntarily except as they may be required from time to time for consumption". Notwithstanding the inhibitions of the Volstead Act it was ruled that the owner might continue to store them for an indefinite period and then remove them to his dwelling for personal use. The opinion not only declared the storage lawful but also said (p. 93): "That transportation of the liquors to the home of ap-

pellant, under the admitted circumstances, is not such as is prohibited by the section is too apparent to justify detailed consideration of the many provisions of the act inconsistent with a construction which would render such removal unlawful. . . ."

Corneli entrusted his supply to a government warehouse as permitted by the statute and is denied the privilege of taking it home because that warehouse is not contributory to his dwelling, nor an adjunct thereto, nor an outbuilding connected therewith. Street made no such claim concerning the Forty-second Street Warehouse—indeed his counsel seem to have been wholly ignorant of this extraordinary extension of his home—and the decree in his favor was not rested on that gossamer. It went upon the assumption that Congress never intended to prohibit bona fide owners of lawfully acquired liquors from storing and removing them for personal use at home, although the Government stoutly maintained the contrary view. The following quotation from the opinion sufficiently indicates the theory accepted by the court:

"It may be that the custody of liquors by a warehouse company was thus not declared to be unlawful because the writers of the act did not have such a case in mind, but it was more probably because Congress would not consent to allow lawful possession and use of liquors in dwellings having storage facilities for them, while denying the only possible means of preserving and protecting such liquors to persons with less commodious homes. The Congress was concerned with the great problem of preventing the manufacture and sale of intoxicating liquors for beverage purposes in the future, and it seems to have given but slight attention to the consumption of such relatively small amounts of such liquors as might be in existence in private ownership and intended for consumption by the owner, his family or his guests, when the Amendment and the act should take effect. An intention

to confiscate private property, even in intoxicating liquors, will not be raised by inference and construction from provisions of law which have ample field for other operation in effecting a purpose clearly indicated and declared."

If Corneli had only suspected the remarkable power of the Forty-second Street Warehouse to attach itself to the dwellings of all patrons, without regard to distance, he might have chosen a safer course. He stored where the statute said he might. Now he is told that no analogy exists between his lonely barrel there and the many "bottles, barrels, casks and cases" which, within more favored walls, await the pleasure of their owner.

CORNELI *v.* MOORE, COLLECTOR OF INTERNAL REVENUE.

GHIO *v.* MOORE, COLLECTOR OF INTERNAL REVENUE.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

BRYAN *v.* MILES, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MARYLAND, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

EASTES v. CRUTCHLEY, COLLECTOR OF INTERNAL REVENUE FOR THE SIXTH DISTRICT OF MISSOURI, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

Nos. 174, 175, 428, 548. Argued December 15, 1921.—Decided January 30, 1922.

1. Under the National Prohibition Act, the owner of whisky stored in a bonded warehouse can not secure its release upon payment of